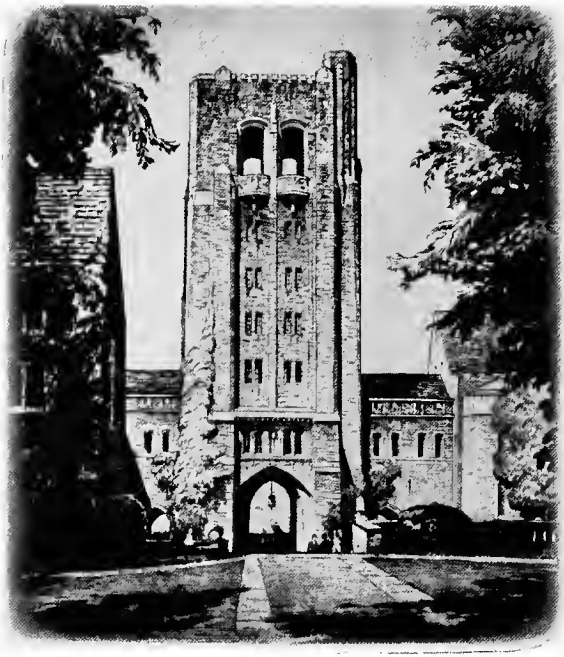
# LEGAL SKETCHES

A. B. MAJOR.



# LEGAL SKETCHES.

# LEGAL

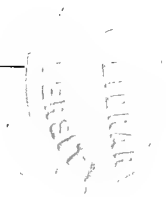
# SKETCHES

BY

ALFRED B. MAJOR

SOLICITOR

Sir Man of Lawe,' quod he, 'so have ye blisse
Telle us a tale anon, as forward ys.'
CHAUCER.



MONTREAL
A. PERIARD, LAW PUBLISHER
21, 23 & 25 ST JAMES STREET

1887.

# PREFACE.

The following sketches are republished by permission from the Albany Law Journal, the American Law Review and the Central Law Journal, of St. Louis. It will be readily perceived that I make no pretence of adding to any one's stock of legal lore. "Whoever "goes in quest of knowledge, let him fish for it where "it is to be found ; there is nothing I so little profess." My only object has been to amuse an occasional leisure hour, and if my reader shall say that this end has been in any measure attained, I am content.

ALFRED B. MAJOR.

MONTREAL, Dec 7, 1886

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# *IN WESTMINSTER HALL.*

In my day the most conspicuous figure in Westminster Hall was Lord Chief Justice Cockburn. He was a little old man, with the most intellectual face I have ever seen—high, broad forehead, clear, brilliant eyes, and a most musical voice. His detractors said he was too fond of displaying his own powers, and too ready to take a strong view of one side of a case, but if there was some little foundation for these complaints, none could deny his rapidity of apprehension, clearness of thought and expression, and never-failing courtesy. His very faults arose from his desire to do justice. He could not sit on the bench a dummy, and see the weaker made to appear the better reason to a befogged jury. Cockburn was generally admitted to be *facile princeps* in the strongest Queen's Bench Court that England has had for many years.

His coadjutors were Blackburn, Lush, Mellor, Quain and Hannen. Blackburn, a master of the common law, profound and exact, but justly unpopular with the bar for his bullying tendencies and merciless treatment of unknown juniors, a fault the more inexcusable in one who had himself been promoted from obscurity to the bench. Lush, a gentleman really beloved by all who practised before him, modest and unassuming, but

withal having a quiet dignity which stood him in far better stead than his colleague's sneers and impertinences. Mellor, a sound, steady, thorough lawyer, rather prolix, but always equal to his work, and Quain and Hannen, both men who wanted years rather than ability to make them equal in weight with their more prominent brethren.

Outside the Queen's Bench the two best known and ablest judges were Brett and Bramwell. Brett was reputed the best man on the bench for a shipping or commercial case, and Bramwell had a fame all his own for strong common sense, and a rough, pithy way of putting things. Perhaps no judge was a more general favourite than Bramwell, both with the bar and the public, and none cared less for popularity. Then there was poor old Kelly, the chief baron, the wreck of a splendid advocate, now capable of nothing but "words, words, words."

In the equity courts, which, by a legal fiction we may treat as being at Westminster, where indeed they sat once every term, Romilly's somnolent tendencies were still an unforgotten jest, and his great successor, Jessel, was commencing that magnificent but too short lived career which remains the wonder and admiration of the English bar. Malins, an able lawyer, but a peppery and undignified judge, was constantly kicking up his heels, and sedulously kept up the title of his court as the "Chancery Bear Garden." Still he got through a heavy list every term, and has contributed no few well considered decisions to modern equity jurisprudence.

In appeal, James and Mellish, the inseparable twins,

delivered their constantly unanimous judgments, and James carried to its extreme the conversational style of argument, much to the bewilderment and disgust of the less ready members of the bar. Mellish generally confined his share in the spoken labors of the court to the words "I assent," invariably following his colleague's judgment. Notwithstanding these apparent defects, the decisions of this court always carried great weight, and were seldom reversed by the lords, both the lords justices being well known as lawyers of unexceptionable learning and ability.

The House of Lords itself, I only saw once in legal session. Jessel, then solicitor-general, was delivering his famous argument in the Mordaunt divorce case. Benjamin, if I remember rightly, was his opponent, and his little figure appeared to be utterly swallowed up in the full-bottomed wig which it is *de rigueur* to wear before their lordships. On the woolsack was the chancellor in lonely majesty. Immediately before him were three or four common-law judges, wearing their huge wigs with an air of sulky resignation, and on the benches around in ordinary civilian dress were the law lords, Hatherly, Chelmsford, Selborne, and one or two others whom I have forgotten. The whole scene was strangely like morning service in an ancient cathedral—the full, sonorous tones of Jessel—the sacrificial vestments of the judges, and the great spaces of blank emptiness in the gorgeous chamber, partially lit up in many colours by the morning sun struggling through the stained glass, whilst the law lords themselves, in their lounging attitudes and evident jauntiness, suggested the little group of *dilettanti* always to be found around the choir waiting for the anthem.

# THE TEMPLE CHURCH.

After a few years' absence from London it is hardly safe to assume the present existence of any old landmark, but we hope the much decorated barber's shop in Fleet street, just within Temple Bar, has escaped the fate of its better known neighbour, the old Bar itself, and still remains with its bold inscription informing the passer-by that here once stood the palace of Henry VIII. A second Elia would find matter for an essay in such an instance of the irony of history, but the mantle of Elia, alas ! has not fallen upon any successor, and our purpose is not to moralize, but to turn once more, as in the happy days of yore, down the archway under the shop, and descending the flight of steps, to enter the ancient and solemn portal of the Temple church. What an airy architecture have we here! How original and striking the effect of the old octagon chapel —of which the first stone was laid by an eastern patriarch in the early crusading days—opening into the younger but still ancient oblong, forming now the principal building ! Around us lie the crusaders themselves, with legs crossed, and their great swords by their sides, while over our heads the quaint gargoyles show the exuberant wit of monastic fancy. How some old fellow

must have chuckled to himself when he knocked off this poor sinner's head, with the devil actually eating his ear! Truly Rabelais was not without predecessors who write their mocking tales in stone.

But we pass through the barrier and enter the main building. Our lady companions are ushered to their separate seats at the side, and we, bachelors for the nonce, must take our places in the middle pews, for the separation of the sexes still remains a custom of the church, handed down from the old monastic times. A chorister boy is busy arranging music books. A distant strain of rehearsal reaches us from the outer buildings, and we may therefore safely conclude that we have a quarter of an hour to spare before service commences. We notice the clean spring of the arches from the darkly glistening, many columned pillars, the rich, soft colours of the roof, the purple windows, the quiet, unobtrusive completeness of the whole building, and we admit that the Honourable Societies of the Inner and Middle Temple have indeed known how to build to God a church worthy of their old and noble guild. We recall, too, the many famous divines that have preached here, from the sad and serious Hooker, the stately periods of whose "Ecclesiastical polity" still delight the student of Elizabethan literature, down to the present distinguished master, C. J. Vaughan, whose sermons are a model of cultured power.

Even this afternoon we notice in the congregation many a famous man. Yonder, pathetic in his blindness, sits the beloved Sir John Karslake, and next to him is Sir Thomas Chambers, recorder of the city, whilst just behind them, also amongst the Benchers of the Middle

Temple, we espy the ruddy countenance of the Prince of Wales. Over against them, on the Inner Temple side, sits old Lord Chelmsford, erst chancellor, close to his successor on the wool-sack, Cairns, and further on, Selborne, who in his turn has ousted Cairns, is cheek by jowl with the last of the chief barons, Sir Fitzroy Kelly. The Temple congregation is probably the most intellectual and distinguished in London, and it is no ordinary ordeal a preacher here has before him.

Now let us see what music we are to have, and whilst we are examining our anthem and church books we do not fail to note the winged pegasus stamped thereon, the emblem of the Inner Temple. We are just deep in the learned examination of cathedral music, which precedes the chorales, when the melodius thunder of the organ awakes our attention. Nor must we omit to notice this famous instrument peculiar in having six black keys to each octave, to wit, a B minor distinct from the D sharp, built by Smith, the father of English organ building, *in tempore* Charles II. The construction thereof was a subject of competition between the aforesaid Smith and the then equally renowned Renatus Harris. Both rivals erected an organ in the church, and the *cognoscenti* of the day were at a loss to decide which to select, till ultimately the choice was left to Chief Justice Jeffreys of bloody Assize infamy, who pitched upon the one which, greatly augmented and improved, now delights us with its soft fullness of tone. For many a year has Hopkins, the present organist, to whom the English church is indebted for some of its most beauti-

ful services and anthems, presided at its keys, and long may he remain an institution of the Temple.

And now the choir and clergy enter, and evensong commences. We will not dilate upon the well-matched voices of the boys, the harmony of the chorus, and the sweetness of the solos, but the most unmusical hearer cannot but be struck by the exceptional effect of the hymn singing in which the voices of the whole congregation join. Each person has the tune before him, and the majority of the worshiprers being sufficiently skilled in music to take their parts, the result is a grand volume of harmonious sonnd. The preacher this afternoon is the reader, Ainger, a quiet scholar, whose thoughtful cogent discourses have in large part remained in our memory [a memory not to prone to retain sermons], even after the laps of years. The pulpit candles throw into strong relief his pale and wasted face, whilst the rest of the church is gradually shrouded in gloom, through which his well modulated voice sounds with strange effect, and it is with almost a start that we rise at the Ascription, and receive the peaceful Benediction. Soon we are out in the dark and foggy streets, amongst the noise and rattle of the city, from which we have escaped for two quiet hours, and in our walk home-ward Milton's noble lines come into our minds as a summing up of the afternoon :

And let my due feet never fail
To walk the studious cloister's pale,
And love the high embowed roof,
With antic pillars massy proof;
And storied windows richly dight,
Casting a dim religious light;
There let the pealing organ blow
To the full voiced quire below,
In service high and anthem clear,
As may with sweatness thro' mine ear
Dissolve me into ecstasies,
And bring all heaven before mine eyes."

## AT ASSIZES.

Of all the pleasant places that are studded throughout England, commend us to the "ever faithful city," beautiful Worcester, as the model of an Assize town. With its vast cathedral, ancient even in the days when King John was laid to rest therein, its queenly river, its broad, grassy race-course, its old rookeries, its modern factories, it combines in an unusual degree the excellence of the past and the present, and when we add to these attractions, an abundance of good hotels, and Assize courts, large and well ventilated, it may be easily understood why we are speeding our way down there this morning to attend Assize. Dirty Stafford is nearer to our own district, but there the calendar is always crowded and the courts are not fit to breathe in.

Arrived at Worcester, we find ourselves ahead of the judges whose train is half an hour late, and, as nothing can be done till they arrive, we secure our quarters at the "Hop-pole," and stroll down to the cathedral, to which we know the judges will straightway proceed, both their lordships being true sons of the church, and sure to attend the Assize sermon. Half an hour quickly passes in the familiar aisles, and then we hear the blare of trumpets outside, the great doors swing slowly open, the organ peals out the National Anthem, and Her Majesty's judges, in all the pomp and ceremony of state, accompanied by the high sheriff and his crew, pass up the broad nave, enter their stalls in the choir, and morning service begins. After the Te Deum and the anthem we make our escape, having no mind to listen to the string of platitudes which some reverend and rusty canon is about to inflict on his unfortunate audience. We repair to the Shire Hall, and pass the time in badinage with our *confrères* already there, till at last the judges come from church, go on the bench and "open the commission," a mystic ceremony performed with much antique solemnity, and supposed to be essential to the validity of all the proceedings at the Assize. No sooner is the commission opened than the minor officials begin business and we are at liberty to enter cases. After a little delay we get our cause favorably placed on the list, and we have next to deliver briefs. Mr. Matthews, Q. C., whom we have taken the precaution to retain two months ago, lodges as usual in the quiet abode of the widow Dunn (all hotels are, or were, at the time of which we are writing, tabooed to the barristers on circuit), and there we deposit his bulky brief, with its little endorsement :

" Mr. Matthews, Q, C. . . . . 50 guas [1]
Consultation, . . . . . 5 guas.

55 guas.

With you :

Mr. Dryasdust,
Mr. Pepperemwell."

The other briefs vary only in the lesser amount of the fees marked thereon, and are similarly left at the learned gentlemens' respective lodgings, and now we are free for the day. Mr. Matthews is expected down about six o'clock in the evening, and before the morning he will have to read perhaps a dozen briefs, one or two of which, like our own, may consist of 100 pages of closely written matter, and involve much analysis of dates and facts. To a stranger, the rapidity of apprehension, which the English system of instructing counsel at the last moment produces in the average barrister seems almost incredible ; but there is an equally striking result flowing from the division of the profession into two branches which is not so obvious to outsiders, but must be well known to all who, as solicitors, have had the task of preparing cases for trial, and have subsequently heard them tried. It is this—that very seldom indeed do counsel present and handle a case in the manner and from the point of view anticipated by the solicitor. The bringing a new mind to bear upon the case almost always results in the case being placed in a fresh light, in the discarding of a host of minor points,

1 " guas, " guineas.

and in the battle being lost or won on the real hinges of the matter. The solicitor's careful mind has provided for every contingency, and prepared every detail, and had he to argue his case himself he would be far more prolix, and consequently less forcible than the barrister. This is, we think, the true advantage of the English dual system, and we are bound to say, after some experience of the American and Canadian plan, that we still give the preference to the old way.

But we must not longer digress. Let us imagine the afternoon and night past, and the day of actual work arrived. Consultation is fixed for half past eight sharp at our leader's chambers, and there accordingly we go and meet Mr. M., and his two juniors. The keen hard lawyer receives us with dignified courtesy. He says little and the consultation does not last ten minutes, but we have had sufficient experience of counsel to know from the little he does say that he has read his brief, a thing by no means to be taken for granted. Mr. Pepperemwell, a pert little dandy with an eye-glass, evidently stayed too late at the county ball last night and has seen nothing of his brief, except the outside, but by the time the case is called he will have picked up enough to vigorously cross-examine one or two weak witnesses on the other side and this is all we expect from him. As for Dryasdust, a reliable, thorough old lawyer, not showy, but true, he has previously drawn the pleadings, and advised on evidence and consequently knows the case almost as thoroughly as we do ourselves.

Entering the civil court, we find ourselves in a large square hall, one side of which is occupied by the bench whilst round the other walls are ranged rows of high-

backed, uncomfortable pews, gradually descending as in a class room. The centre place or pit immediately beneath the judge is filled by a large baize covered table, round which sit the members of the bar in lively conversation, the sedateness of their wigs and the vivacity of their countenances forming as odd a contrast as their talk, in which racing and law, politics and scandal jostle for predominance. As the judge's door opens, silence instantly obtains, and Manisty J., a quiet slow old man, as yet blissfully ignorant of the Adams-Coleridge case, takes his seat and begins work. In those days Manisty was considered an exceptionally good lawyer, but weak in his appreciation of facts and wanting in capacity for business. In an appeal court he might have made a reputation—at *nisi prius* he was lost.

We need not recapitulate the various proceedings of an assize trial which differs in little but its surroundings from an American trial by jury. There is more form and circumstance amongst the Englishmen, but there is also much more rapid despatch of business. Everybody is in a hurry, for the time allotted to the assize is quite inadequate to the proper trial of the causes set down. Out of the sixteen on the list, probably seven or eight will be tried out, and, of the rest, some will be settled, others sent to a reference and two or three made *remanets* for Gloucester, at which place, the last on their road, the judges can sit indefinitely and clear off the arrears of the whole circuit. This, of course, applies only to the civil business. On the criminal side, the judge must make a complete jail delivery before leaving each town, no matter how long it takes him or how the other appointments of the circuit are deranged.

As our case is not reached on the first day, we have still to stay over, and indeed, we are in no very great hurry to get away, for we are pleasantly lodged in an old-fashioned, homely hotel, and there is sure to be a race meeting, a county cricket match, or regatta, or some kind of festival going on at assize time, not to mention the minor attractions of the theatre, refreshingly provincial, or the glee club. This last institution deserves, at least, a passing notice. From time whereof the memory of man runneth not to the contrary, the singing men of the cathedral have been accustomed to meet in a tavern once a week and there sing glees and catches together. These meetings are now held in the large hall of an ancient inn and here on the usual night, the good burghers of Worcester are wont to assemble, smoking their long pipes, drinking their clear red ale or fragrant whiskey and listening to those cheerful old madrigals and glees which are the most truly national music England can boast and which seem never to lose their charm. Long may the good old custom be kept up, not for the sake of gain, for not one copper do the singers receive, but as a living mark of that mild and tolerant feeling which is hereditary with the ecclesiastics of Worcester.

But the pleasantest holiday must end. On the thirdand last day our case is reached, fairly well tried and a special verdict taken. The judge orders the legal points, which are intricate, to be argued before him in London after the circuit is closed, and suspends till then the entering up of judgment. This means more briefs, more fees, and considerable delay, but, as our client happens to be a corporation, we do not feel that extreme disgust at the result, which our friend Jones, the solicitor

on the other side, vigorously expresses. The judge may be, as he says, an old woman—he may even be right when he calls the barristers sharks, but our corns are not trodden on and why should we grumble? Anyway, the Assize is over and we have only to pay our reckoning at our inn and go home.

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## *AT GUILDHALL.*

The Guildhall courts used under the old *régime* to be the most active centre of substantial litigation in the kingdom. Here, during the appointed terms, the legal student might take his pick of six divisions, two for each of the superior common-law courts. The chief justices and chief baron were seldom absent from the Guildhall sittings, for the heaviest commercial cases found their most convenient and natural tribunal here, almost under the shadow of St. Paul's and within five minutes' walk of Change, Lothbury, and the heart of the city.

The same cause that attracted a strong bench attracted a strong bar, and the faces most familiar to the abode of Gog and Magog were those of the men most renowned for forensic ability or sound learning at Westminster and on circuit. The lofty and spacious Queen's

Bench, over which Cockburn, clear and courteous presided, was the scene of some of Benjamin's most remunerative successes, and the wonder the by-stander at first felt on seeing a little, unprepossessing man with a weak, disagreeable voice, and no pretensions to oratory, guiding rather than pleading to judge and jury, disappeared as one noted his perfect mastery of his case, his memory exact for the smallest detail, capacious enough to hold each such detail in due subordination, and his pellucid law. Another frequent figure was that of Thesiger. Tall, handsome, and singularly youthful in appearance, he had all those adventitious aids to success that Benjamin lacked. He, too, had great weight with the judges; but if we may venture to criticise so distinguished an advocate, he somewhat lacked the faculty of ramming his points home, so essential with a jury, even though that jury be a special jury of London merchants Thesiger knew how to appeal to the man of taste, to the student, to the judge; but, to a jury, such a man as Watkin Williams, inelegant of speech, but forcible and lively, was more effective. Not that Williams was a weak lawyer or a mere *nisi prius* advocate—far from it, he was one of the soundest commercial lawyers at the bar—but to his learning he added homeliness, and a British jury loves homely common sense. We must not linger longer in the Queen's Bench. As we write, visions of Milward, great in admiralty; Butt, his equal rival; James, since attorney-general, a man of wondrous fluency; Karslake, *beau ideal* of an honourable English lawyer, and many another well remembered figure rise before us; but our readers will like to glance at another court and see what is going on there.

The Exchequer, for some reason, was not in great favour with commercial litigants, but it got a considerable share of the cases which delight newspaper readers; and here therefore the orators, as distinguished from the lawyers, were often to be found, Here we first heard Serjeant Parry, to our thinking the Chrysostom of the English bar. For powerful, polished and easy speech he had no equal, and he was withal a very effective hand at cross-examination. Here, too, might sometimes be seen a serjeant perhaps more widely known than Parry, Ballantine, to wit, a man of great possibilities. His speeches lacked that finish which marked his learned brother's orations, but their practical value was at least as great, and we should fancy there was not much difference in the two men's fee lists. Another brilliant speaker and busy lawyer, oftener at Guildhall than either of the foregoing, was Sir Hardinge Giffard (now Lord Halsbury) an impetuous Rupert-like leader, seeking to sweep all before him with a rush, and proving himself just as good a solicitor-general as he had in his early career been a good Old Bailey lawyer. A conspicuous contrast to all these, and a more successful man than any of them, was Sir John Holker, Disraeli's favourite attorney-general. A rough though easy speaker and an unostentatious cross-examiner, his whole demeanour was that of a jolly Yorkshire farmer. But like the Yorkshire farmer, Sir John was "canny;" no unguarded admission ever fell from his lips, no indiscreet question brought a damaging reply. He might not say a great deal, but he never said too much, and what he said was sure to be pungent; and so it gradually came to pass that this plain man became notorious for his constant success, and more showy men wondered at that success and

called it luck. One case of his we remember, tried in the very Exchequer Court at Guildhall of which we are now writing, in which he especially showed his quiet skill. It was the suit of Rubery *v.* Grant & Sampson. The plaintiff was an unknown adventurer; the defendants were the notorious Baron Grant, then at the zenith of his fortune, and the city editor of the *Times*. With a weak case, a doubtful client, and an adverse judge, Holker triumphed over the united powers of the Thunderer and the financier. The *Times* very honourably reported the whole case *verbatim*, and upon its conclusions, got rid of Mr. Sampson; but the defeat was none the less a heavy blow to its commercial influence.

The superior courts of common law were not the only legal tribunals at Guildhall. Their visits were only occasional, being in fact the Civil Assizes for the city of London; but the Lord Mayor's Court had its permanent abode there. This was a peculiar jurisdiction, extending not only through the city, but also, by a legal fiction liberally interpreted, to all causes of action that could by any possibility be construed to have arisen therein. Its procedure was simple and convenient, its judges, the Recorder and Common Serjeant (in my time, Sir Russell Gurney and Sir Thomas Chambers) were able men, and it had, in addition, a very unusual but useful practice known as "foreign attachment," by which in many cases the defendant could be compelled to give security for debt and costs immediately upon the service of the writ, so that with all these advantages it was not surprising that the Mayor's Court should be greatly resorted to by suitors in small matters. A number of smart juniors constituted its ordinary bar, and altogether it was a very satisfactory and business-like affair.

Our concern being merely with the legal aspect of Guildhall, we cannot dwell upon its fine library, well selected and magnificently housed, in which we passed many happy hours stolen from lunch-time and half-holidays; its common council meetings with their unmitigated noise and riot; and its great annual feast, when the Cabinet and the judges, and all the men of most note in political, professional, or mercantile life assemble to honour the incoming mayor. But we must not leave Guildhall Yard without remembering the pet pigeons that, in all the confidence of wonted security, hop around our feet, and the attenuated horse waiting in yonder corner for some mysterious fate. Every place has its secret, and the secret of Guildhall to us was the invariable presence at all hours in the day of an emaciated horse waiting in the accustomed corner for some one who never seemed to come. We believe there was a police court hard by, but we never understood the connection between the police court and the horse.

## SENTENCED TO DEATH—A SCENE IN AN ENGLISH COURT.

The prisoner in the dock would not, under ordinary circumstances, attract attention. Shambling, undersized, and listless, one may see dozens of his type hanging around the pit banks any Saturday afternoon, hungry, lazy loafers, whose sole object is to drag through an animal existence with as little work as possible. Whether the repeated sight of the weekly arrival of the pay clerk with his bags of yellow sovereigns acted as a cumulative temptation to this man's vaguely brooding mind, or whether impelled by some sudden onslaught of the devil, we cannot tell, but one Saturday morning he was noticed lounging near the bank of the neighbouring town, and when poor Meredith, little suspecting how short a span of life remained for him, emerged therefrom, laden as usual with the colliery wages, the prisoner quietly followed and in broad day light, on a well frequented highway, almost in sight of the passers-by, shot him and decamped with the coveted bags.

So bungling was the execution of the crime that detection and arrest were quick and easy, and now some two months after that fatal morning this commonplace criminal stands here to receive his wage and have his own span of days exactly meted out. The promis-

ing junior, assigned by the formal humanity of our law for his defence, has made the most of a hopeless case, resting principally upon a possible insanity of which there has been some faint evidence given, but the judge has covertly destroyed his slender plea, telling the jury that if such excuses are to be taken, our prisons may at once be turned into lunatic asylums. Mere empty clap trap this, but when delivered from judicial lips by that incarnation of wisdom to rustic jurors, a judge on Circuit, it is abundantly sufficient to seal the prisoner's fate, and so after a quarter of an hour's retirement, for decency's sake, the twelve have delivered their verdict.

Is there no one here, besides ourselves, who feels a sickening doubt of the justice of the dreadful sentence just impending? Look at that wretched specimen of humanity, not a muscle of whose face or hands betrays what is passing in his dim brain. To the damning evidence, to his counsel's appeal, to the judge's summing up, to the verdict itself he has listened disconnectedly with that indolent lack of interest characteristic of his stupid class, himself the least concerned spectator in the densely crowded court; and now, as the low tones of the judge pronouncing sentence strike on his ear, he looks up at him with a slight vague speculation in his eyes, evidently noting with dull surprise, the black cap which has suddenly appeared on the judicial wig. It is clear the judge is far too case-hardened to feel any qualms such as are troubling our less ancient conscience. Behind the expression of decorous pity on his face lurks an irrepressible self complacency which receives from the tremendous power he is now exercising, a gratification unowned, but real and deep. His well-modulated

voice, bated to a theatric whisper, is under excellent control, and the lace handkerchief in his hand shows not the slightest quiver. This is his first circuit, probably his first murder case, and his hard self control does much to explain his personal unpopularity with the bar.

But why does the keen and zealous B. down there, who as magistrate's clerk has been the main instrument of conviction, bite his moustache and look anywhere but at the dock? We know his kindly nature too well to have suspected him of gratification at the success of his well arranged proofs, but we did not expect that such success would cause him positive disquiet. Perhaps the prisoner's demeanour and appearance have impressed him, as they have ourselves, and he regretfully thinks of those little circumstances pointing to insanity which no one followed up, because in fact no one was paid to do so. However the strain of the present moment will soon pass off, and when we dine together at the "Hop-pole" this evening our friend will be himself again.

Look now during this interval of hushed attention, when even the "irresponsible frivolity" of the junior bar is silent, at the expression of all these faces whose eyes converge upon the prisoner. If instead of an English court of justice, the scene were a Roman amphitheatre, the act, a gladiator's death, the general expression of animal excitement might be more intense, but it is still sufficiently prominent to be painful. The same passion is being ministered to, and we feel it with the rest. Two persons only have their thoughts elsewhere. That young and handsome barrister, gazing abstractedly

at the skylight, is the prisoner's counsel, who, his duty done, has at his tongue's end hosts of brilliant expressions and striking appeals which come unbidden now they are no longer needed ; and that poor woman weeping bitterly in the distant corner,—who can speak her griefs ?

At length the judge has finished his formal sentence and not less formal platitudes. The convict, passionless to the last, is hustled down the trap door to the cells below. In three weeks time he will pass through another trap door and "justice will be vindicated!" How the account will stand in better balanced books than ours, nor you nor we can tell, but the general rush from the court room scatters our dissatisfied reverie, and we return to the civil side where our interminable mining suit is dragging its slow length along. No danger that *there* slight indications in the evidence will be left unworked, for that is an issue involving *money!*

## AN ENGLISH COUNTY COURT.

It is County Court day at D., and the local practitioners are all at their offices at 9 sharp, waiting for the last stray fish that may come to the net. I have a jury case with S., "Mr. Attorney-General," as we have dubbed him, and two or three smaller matters against less dangerous antagonists, but these are all prepared and will cost me no trouble this morning. I have seen my witnesses, looked up my cases and am ready for the fray. What I now await is the visit of the country folk, who, after having made up their minds to rely upon their own unaided eloquence, will surely lose heart at the last moment and run to the lawyer. And here comes the first batch tumbling up stairs, a dirty "butty" collier, who has not even taken the pains to wash himself for court day, his burly, masterful wife, and his witnesses, two pitmen, one of whom rejoices in the name of "Killers" Grant. As none of the party can either read or write I have to make a wild guess and dub my man Achilles, which classic cognomen he accepts without compunction. Twenty minutes suffice to dispatch this batch, for I hear the noise of many voices below. The needful guinea is duly paid and party No. 1 adjourns to the court to make room for No 2, and so on, till at 10 : 30 comes a lull, and I take a final look at my papers

and fix myself up for the court-room. At the last moment a belated litigant rushes in, and half past eleven strikes from the church tower before I find myself outside the office and on the way to battle.

The registrar has of course been sitting since 10, and has by this time disposed of all the undefended causes, so that I have scarcely donned my gown and entered court when the judge's door opens, and with a quick resolute step, Sir Rupert moves to his bench, bobs to the bar, and the first case is called.

The first case happens also to be my friend H 's first appearance, and he is sadly overweighted by the grizzled veteran on the other side. The judge however, with his usual kindness to beginners, helps H. through, and if he does not exactly score a victory, yet he does not suffer a thorough-going defeat, and as he confesses to us afterward, "it wasn't half so terrible after all, you know."

And now it is noon, the hour fixed for juries. In five minutes the seven jurors are sworn, and "Mr. Attorny-General" is opening for the plaintiff. S. is a self-made man; beginning as an office boy he has made his way by force of ability; he owes every thing to the County Court, for it is the reputation acquired there which has built up for him a practice now second to none in the county. Personally he is not popular with his brethren, but the plain truth is that he has been too successful to be popular. They look at him and think of clients lost. Having no old grudges against him myself, I can judge him more fairly. I esteem him a model advocate, and a good man to deal with. To-day

he will probably earn 30 or 40 guineas, for it may safely be assumed that he is engaged in at least three-fourths of the cases on the list.

Now let us take a look at the judge. Stout, with a grizzled beard, a broad forehead, and eyes that almost speak, Sir Rupert is a terror to bogus witnesses and all the other frauds who haunt a court-house. He is hardly less dreaded by the slow coaches of the bar who cannot keep up with his intellectual pace. But he is beyond all question the right man in the right place.

Thoroughly acquainted with the staple trades of the district and their intricate customs and rules, and a warm but honest friend of the working man, his decisions are accepted with general content, seldom appealed and still seldomer reversed. His patience with beginners is exhaustible *for a time*, but after a certain period he evidently considers their novitiate passed, and thenceforth they must take their chances with the rest. One thing he hates—prolixity. Before him an advocate must be quick, willing to take points without labouring them, and economical of speech. But whilst we are discussing the judge, our trial is going rapidly on.

In an hour S has opened his case and called his evidence and my turn has come. Ten minutes suffices for my opening, half an hour for my three witnesses, and then in accordance with our usual practice we waive our further speeches and leave the case with the court. Sir Rupert sums up carefully and fully, with a distinct intention of showing the jury which side ought to win, and at ten minutes after two the jury are ready

with a verdict, and the case, involving a question of some £40, is decided. The total expense of the action to the losing party will probably be about £7 or £8 taxed costs of the other side, and £10 to his own attorney, and from the inception of the suit to its final decision not six weeks have elapsed. It is in this way and in tribunals such as these, that the great bulk of English litigation is disposed of. No wonder the County Courts are popular.

The jury are no sooner out of the box than the next case is begun. The judge takes his chocolate and biscuits on the bench, and the attorney who wants his lunch must get it as best he can, for the court waits for no man. One cumbersome account case is relegated to the registrar, two or three are settled by consent, every one works with a will, and by five o'clock we see the list conquered and the judgment summonses reached. By six, the court-room is silent and deserted, and County Court day is over.

As it is a fine evening we may rely upon meetiug most of our *confrères* on the cricket field, and accordingly thither we repair and close the day with "beer and skittles."

# ODDS AND ENDS.

A name now almost forgotten by the public is that of Sir John Karslake. Yet in his day—less than fifteen years ago—he was by common consent the first man at the English common-law bar. The brilliant attorney-general of a brilliant government, learned, eloquent and upright, with a physical presence that well supplemented his intellectual gifts, Sir John was the beau ideal of a great advocate. No other man within my recollection had such weight with the judges, and his certain destiny appeared to be either the chief justiceship, or if he remained in politics, the woolsack itself. But sudden blindness struck him, and amidst the universal regret of his *confrères*, he was forced to retire alike from professional and parliamentary life.

He was succeeded by another Sir John, whose career has since been closed by death. Sir John Holker's forensic art was the art that conceals itself. Outwardly rough, heavy and listless, his list of victories spoke for him, and to no one would the attorneys more readily intrust an apparently hopeless case than to this "man from the provinces," as a supercilious critic once called him. In Parliament he achieved a success much beyond that of the average attorney-general. The miscella-

neous body that represents the British Commons is usually somewhat impatient and incredulous of lawyers. They talk too much and too readily to suit its tastes, but Holker soon gained and kept a place as one of the most valuable debaters in Disraeli's staff. He had a broad way of looking at things, and a certain easy frankness that made his suspicious hearers forget the wig and gown he had left outside. Although a vehement Tory, and a vigorous denouncer of the Liberals and all their ways, yet he made such an impression on Mr. Gladstone that after the fall of the Beaconsfield government he was offered a lord justiceship by his quondam opponent. As a lawyer, Holker was not learned, but he had a way of getting at the pith of a thing that made his opinion valuable. His special virtue as an advocate was hit off by Serjeant Parry, who said that he, better than any other man, knew when to be silent.

But let us leave now the neighbourhood of Westminster, and imagine ourselves in the quiet and beautiful city of Worcester. The Worcester courts are an exception to the ordinary dingy, crowded and inodorous abode of justice, being large, lofty and well ventilated. The learned gentleman in the pit arrayed in the neatest of wigs, the most immaculate of frills, and the glossiest of silks, who is just opening his case to the solid, jolly-looking jurors, is Huddleston, the leader of the Circuit, and as good a man at *Nisi Prius* as any in England. His legal knowledge is not very great—not more than sufficient to serve his turn—and his opponent, the keen, quiet-looking man beside him, has probably forgotten more than he ever knew ; but " Huddy " is an advocate all over, and before a jury he will play second fiddle to

none. Matthews has his revenge *in banc*. There Huddleston's law is listened to with polite indifference mixed with a little of the amusement known at the bar as baiting the badger, whilst Matthews receives the attention his learning deserves. It is, however, strange to observe the immense advantage Huddleston has over all his opponents before a jury. Matthews is no stick; he is fluent and persuasive in speech, severe in cross-examination, and attentive to the jury. Yet, somehow or other, Huddleston's cases are half won before they are begun. Does "personal magnetism" make the difference? Huddleston is now on the bench, and no doubt makes a good practical judge of the Baron Martin stamp.

We need not stop to discuss any of the half-dozen Q. C.s who are on the Assize, and amongst the crowd of juniors, Jelf, the tall young man with the single eye-glass, and Motteram, the burly old fellow, just rising to examine the first witness, are the only ones worth notice. Motteram's career has been one of misfortune pluckily met, and now he is County Court judge of Birmingham, and boats of clearing off his 23,000 cases per annum without arrears! Jelf was undoubtedly the leading junior of the Circuit, a first-rate lawyer and a clever advocate, but a year or two of this tired him out, as it does most men, and he was glad to seek the comparative ease of silk. What with giving opinions, advising on evidence, drawing pleadings, running small cases alone, and prompting his leader in big ones, the leading junior's lot is indeed "all work and no play." Once arrayed in silk, the drudgery of chamber work is past. A glance at his brief over night (and very often

not even that), a five minutes' consultation with the attorney, in which the big man listens condescendingly to the poor fellow's nervous suggestions, and dismisses him with a "Well, Mr. A., I dare say we'll pull it through, but it 's a weak case," and then into court he goes, and very likely opens for a reference. The judge is ready enough to meet him, for has he not a heavy list and only two days to clear it in? and before the astonished attorney can say Jack Robinson, the case is referred to Mr. Blank, the learned Q. C. walks off with his forty or fifty guineas, and the junior attends the reference.

This is bad enough, but worse often happens in London, where, owing to the multiplicity of courts, counsel is sometimes bound to be in two places at once, and not being Sir Boyle Roche's bird, the result is that one cause loses his assistance altogether. The fees must be paid all the same, for the theory is that these are paid for reading the brief, whilst, as if to add insult to injury, this same brief, so dearly paid for, and with all its wealth of legal disquisition and argument, in which probably the attorney has felt a secret pride as the result of much and arduous labor, comes back to his hands unannotated, unread, nay, even unopened.

# AN ARTICLED CLERK'S DAY IN LONDON.

Turning out of Fleet street, just on the city side of Temple Bar (for be it premised we are speaking of days when the old Bar retained its local habitation), we find ourselves in a long, narrow, dirty street, from which the sunlight is excluded by grimy buildings crowded together on each side, and we notice at once a change in the character of the busy folk who hustle us on the narrow pavement. There is an indescribable shabbiness of apparel, a prevalence of garments which have long since seen their best days, and now produce a *tout-ensemble* of threadworn rustiness, matching well with the colorless, hard ground faces of their wearers. We do not need the sight of yonder barrister scuttling along under full sail, with gown distended balloon-wise, and an ancient umbrella protecting a still more ancient wig, or of this pert clerk with an armful of papers, and an expression of latent excitement on his worried face, to tell us that we are now amongst the lawyers, and that this is Chancery Lane. On our left rises the forbidding portico of the Incorporated Law Society building, which we pass not without a twinge of doubtful anticipation of the fast approaching day when we must mount the dreaded stairs and undergo the agonies of our "final," and diving under the archway on our right we scurry by

the historic Rolls Chapel, stumble up the steps skirting the desolate "garden" (oh, much enduring word), and enter that Pandemonium of noise and confusion known as "Judges' Chambers." All round the room, behind the desks, are ancient and not too civil clerks, pursuing their several routine duties, with accustomed disregard of the shouting throng who occupy the large, central space, and straightway we add our tribute to the din, and begin howling in our loudest tones "Field and Roscoe!" "Gregory!', "De Gex!" & so on through the list of opposing firms with whom we have business this morning.

Do not suppose from the sudden rush to yonder corner, and the general scrimmage ensuing, that a football has been surreptitiously introduced into these strictly business precincts. Oh, no! The judge of the day has just come, and the fight is to get before him. A powerful porter guards the door leading to the luminary's presence, and cautiously opens that portal from time to time to let in those who have fought their way to the front. Our athletic training stands us in good stead here, and after a short, but lively struggle, we rush triumphant over a fat solicitor, and heedless of his objurgations soon find ourselves inside. The judge, whom, not being in the glory of his judicial attire, we regard as a rather testy old gentleman, soon knocks off our little matters, and whilst we are still busy explaining, scribbles a few words on our summonses, hands them back to us, and we emerge as unceremoniously as we entered. The formal orders are soon made out, and stamped with the undecipherable blot which is supposed to represent the judge's signature, and now

we are free of chambers for the day. Heated and excited, we turn into the Rolls to look at the cause list, and take a hurried glance at Jessel disposing of motions at express pace, not without casting an envious glance on Chitty's pile of briefs. That learned gentleman's minutes must indeed be golden this morning; and who would recognize in the dry, old barrister of to-day the genial umpire of the 'Varsity' boat race to-morrow?

Now for Mr. W.'s chambers. We cross the lane, enter the really noble gateway of Lincoln's Inn, and make for our learned adviser's abode in the New Square. He is, we find, in the Lord Justices' Court, and thither we follow him. Half a dozen barristers, a couple of solicitors, one old woman, probably insane, and a score of so of that insignificant but necessary class known as suitors, constitute the audience before whom the burly, vigorous Lord Justice James is carrying on an animated discussion with a learned but sorely aggrieved Queen's counsel, whilst his colleague, Mellish, sits by in dignified silence, perhaps cogitating Bacon's dictum that "it is no grace in a judge first to find out that which he might have heard in due time from the bar, or to show quickness of conceit in cutting off counsel too short." Certainly Bacon is no authority in James's estimation. The gentleman we are in search of speedily joins us, and receiving a blank sheet, with the indispensable fee marked thereon, patiently listens to our verbal instructions, and promises an opinion in time for to-night's post.

Our next destination is Somerset House, that huge pile of desolate quadrangles and interminable corridors,

wherein the Inland Revenue Department houses its enormous staff. Our business is with the Legacy and Succession Duty Division, where we have to pass an account, a task to all others most distasteful to our souls. Every estate in the kingdom comes under the scrutiny of this inexorable bureau, and so complete and far reaching is its network that sooner or later the smallest and most obscure succession gets captured therein. And not only must the accounts of all, from the Duke of Westminster down to Jones, the little country shop-keeper in Northumberland, pass and pay toll, but these accounts must all be conformed to certain procrustean forms, and vouched throughout. It is a matter of perfect indifference to yonder bland and smiling clerk whether item 6 of schedule X is a matter of £5 or £5,000. All he knows is that it is not "in form." His politeness is only exceeded by his firmness, and he is bound to win in the long run, so we can only make a careful note of his requirements, and send them down to our country client for him to comply with as best he can.

We have one more call to make before we leave the building, and we make our way across to the probate office in the southeastern corner. Here we have to search a will. nor are we the only persons on a like errand bent. Observe these two women poring with blank countenance over the closely written pages of yonder ponderous folio. They will probably pass the whole day here, and make life miserable for the unhappy attendants, who, conscious of impending fate, are all furtively watching the pair, and casting about for some means of escape. Vain hope! The stern glances of the

elder female fix upon yon unoffending youth ; she summons him to her side, and the investigation commences. Her first demand is for "the man who wrote out that," and as it is evident that nothing short of the production of the original will and its collation on the spot with the transcript, will satisfy her doubts, we leave poor Jackson in her clutches, reflecting that after all a berth in the civil service may have its drawbacks. Never did we visit this well-hidden office without finding there a more or less numerous gathering of legacy hunters, but how they get there remains a mystery. Other public offices lie open and conspicuous to the passer-by, but are never invaded by the profane feet of the laity. This one, huddled away down a pair of back stairs in an obscure corner of an inner quadrangle, seeks privacy in vain.

And now, at last, for Westminster. We pass the Horse Guards with its glittering troopers, the less obtrusive Admiralty, and the splendid mass of the new Treasury, and crossing the grand old Hall, with its usual throng of applewomen, witnesses, lawyers and policemen, enter the Court of Exchequer, where Kelly, last of the chief barons, presides, patriarchal and garrulous. You will notice that the learned gentleman who happens to be addressing the court at the present moment occupies a little pen all to himself, instead of being mixed with the general throng of his compeers. He is Mr. Webster, the present "tubman" of the court, and by right of his mysterious title occupies his "tub." Have the Judicature Acts swept away even this old custom ?

Our object being to see the list for to-morrow, which is not yet ready, we have half an hour to spare, and where can we spend it better than in the Abbey, just across the street? In three minutes we epitomize many a great lawyer's career, passing from Westminster Hall through St. Stephen's into the Abbey, and con for the hundredth time the familiar inscriptions. A half hour quickly passes. Returning to the court we find the cause list ready, and resigning ourselves to the sulphurous discomfort of the undergound railway, we are soon back in the city, where the gas-lights gleam confusedly through the fast thickening fog. An hour's letter writing finishes the office day, and we make tracks homeward to resume with what spirit we can our study of "Haynes' Equity."

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## *A DAY IN A COUNTRY SOLICITOR'S OFFICE.*

It still wants a few minutes to nine o'clock, when I enter the office to open and read the morning's correspondence. I am speedily joined by our principal, a stout, ruddy, middle-aged man, genial, shrewd, and sensible. The letters read, we light the matutinal pipes and start off together for our usual stroll in the bosky glades of the castle grounds that almost adjoin the office doors. It is a bright spring morning, and the air is perfumed with the scent of the white hawthorn trees,

and melodious with the carol of the cheerful thrush; but our conversation is principally occupied with business, the day's work is laid out, and when we re-enter the office we know precisely what each has on hand, and I have had the advantage of my senior's experience and advice in a quiet consultation, undisturbed by clients and the constant distractions of a busy day.

It is now half-past nine, and the well worn, old-fashioned desks are each occupied by their accustomed tenants. Over there in the corner, apparently oblivious of all external affairs, is old B., the copying clerk, bent over a huge sheet of parchment, on which he is engrossing a lengthy conveyance. For thirty years the old man has occupied the same place, and passed his days in the same routine, and long habit has almost converted him into a human machine. What you give him to copy will be copied, without any allowance for the frailties of human nature, and if in haste you have omitted a sentence or a word, the omission will surely reappear in his transcription. Only the other day he gravely described a lot of land some three acres in extent as "surrounded by a paling *forty* feet high," and justified himself to his own perfect satisfaction by appealing to the draft, in which something that might be taken for the superfluous zero undeniably appeared. Facing him is the cashier and book-keeper, a smart, quick fellow, full of "go," and by far the best man on our staff. On the other side of the room is a clerk whose duties are miscellaneous, including all such copying as does not rise to the dignity of an engrossment, process-serving, county court collections, and, in short, "general utility." Behind him is the office boy, a

"broth of a lad," as office boys generally are. Of the two rooms opening from the outer office, one is occupied by the conveyancing clerk, and the other is the sanctum of the two articled pupils, young gentlemen who have no small idea of their own importance, and the measure of whose work is their inclination to do it. At the present moment, they are earnestly engaged in the discussion of a disputed point of cricketing law, which arose in the course of yesterday's match.

Mounting upstairs to my own room, my first business is to attend to our London agent's letters. An affidavit is required in a chancery suit, those accursed accounts of the Telford estate are again stopped in their slow progress through Somerset House; but, as some compensation, the judge in chambers has ordered the district registrar to review that taxation which so grievously reduced our bill of costs in *Doe v. Roe*. The registrar, being not quite *au fait* in Judicature practice, is sure to go from one extreme to the other, and be as unreasonably liberal on the second taxation as he was unreasonably parsimonious on the first. Whilst still engaged in touching up the much disputed bill of costs for its final appearance, the boy comes up to tell me that the trap is at the door; so, taking one of the articled hobbedehoys with me, I start on my drive to Upton, a colliery village about four miles off, where I have to attend a police court case at eleven. Although our district is a perfect net-work of railways, with stations at every mile, we have found by experience that time is saved by driving to our appointments, when possible. We are sure to meet clients on the road, and seldom return from one of these expeditions without having picked up

some new business or advanced some matter already in hand. This morning proves no exception to the rule, for I am not half way on my journey before I overtake the very man I want for the chancery affidavit, get his instructions and arrange an appointment for him to be sworn in the afternoon.

The police court case is soon disposed of, and our next destination is the Halford County Court, where an *interim* injunction in liquidation has to be made absolute. Twenty minutes suffices for this, and I am free to return to the office ; but now that I am so near over, I may as well go a couple of miles out of the way to see Jones the iron master, whose suit comes up for argument in appeal next week. He is a good client and will be pleased at my attention in calling on him, an attention, by the bye, which will constitute a 13s. 4d. item in his uext account. A chat with him introduces a new business in the shape of a little dispute with the Mines Drainage Commissioners, which he wants us to look after for him, and when at 1.30 I get back to the office, I am well satisfied with my morning's work.

The first thing to be done after lunch is to draw the affidavit, and by the time this is in the copyist's hands, it is three o'clock, and I join the principal in his room, a large handsome chamber, well lined with books, where a first meeting of creditors is about to be held. This is exactly the kind of business for which the "old man" is best fitted. It is no easy task to bring fifteen or twenty creditors, some of whom are sure to be indignant and eager for bankruptcy, into accepting a composition which shall neither be so hard on our actual

client, the debtor as to discourage him, nor, on the other hand, so light as to disgust the creditors, some of whom are clients also. This requires all the senior's tact and experience, and my only business in the room is to look after the multifarious forms and papers required under the act, and keep the procedure straight, so that he may be perfectly free for the real work. The meeting, like most such meetings, is protracted, but after the first half hour, I have little to do and am able to slip out to see occasional clients and write my letters. The affidavit is duly sworn, and dispatched to agents; a small conveyance comes up from the conveyancing clerk and is settled; the vouchers needed at Somerset House are put in hand; and when, at half-past five, the creditors disperse, leaving the principal jubilant at his success in bringing them to reason, there is nothing left but to enter up the day's charges in my diary and cast a preparatory glance over the work for to-morrow. Altogether, the day has been a satisfactory one, and the "old man" remarks on leaving: "If business keeps up as brisk as this, M., I shall take the family to Switzerland in the autumn. Nellie has never seen the Alps, and I need a good holiday myself."

## *MY FIRST CASE*

A SKETCH AT THE MANSION HOUSE

Buried in the twilight of an underground den, known as Mr. W's office, Guildhall, I was regretfully ruminating over the fate which had transferred me, a lad of seventeen, from the pleasant leisure of a country town, with abundant cricket and no drudgery, to my present quarters, where circumstances were exactly reversed, when the sudden appearance of the lively Captain C. woke me up. This gentleman, ever jovial and impecunious, was a fine specimen of the "promoter" class, and the pen of Dickens alone could have done justice to that natty, blithe exterior and that frank *insouciant* address which had so long enabled their adroit possessor to live upon his wits and the British public. On this occasion he was even livelier than usual, being, as he quickly informed me, about to appear in a new *role*, that of defendant at the Mansion House police court, on a charge of defrauding a railway company. His face fell somewhat when he learned that Mr. W. was at Westminster and not likely to return till the afternoon, but as the summons was for eleven o'clock, and that hour was already past, there was no time for deliberation, and after a minute's pause, he asked me to accompany him and as he expressed it, "cheek the thing through somehow." Accordingly off we went together arm-in-

arm, stopping on our way to adorn ourselves with flowers, in approved city style. The facts of C.'s offence were very simple. On arriving at his office a week or so before, he had found a telegram there, summoning him out of town for some days. He sent a *commissionaire* to his wife at his suburban home, with a note to explain his absence, and, thinking no harm, gave the man the return half of his railway ticket. Now the *commissionaires*, who, be it explained, are a corps of old soldiers, uniformed, organized in semi-military style, and much used in London as quick and thoroughly reliable messengers, are not in the habit of indulging in first-class carriages, and the circumstance of this messenger riding in such style attracted the ticket collector's attention, who took down his employer's name and address. The gallant captain, on his return to town, found a letter awaiting him from the solicitors of the railway company, stating that by giving away his ticket, he had broken the by-law printed thereon and laid himself open to a penalty. C. wrote a sensible letter in reply, explaining that it was an inadvertence on his part which should not occur again, and he felt justly indignant, when, with no further ceremony, he was served with the present summons. Unfortunately he had kept no copy of his letter. Arrived at court, we were by no means pleased to see the venerable but strict Sir Robert Carden on the bench, in the place of the genial Stone, who at the time occupied the civic chair. Sir Robert, too, was evidently in a tantrum and was just galopping, spurs and all, down the throat of an unfortunate and nervous lawyer who seemed unable either to contradict him with firmness or to yield with grace. My courage was fast ebbing out at my shoes, when a keen looking man, with a single

eye-glass, whom I instantly recognized as the famous George Lewis, the hero of the criminal courts, courteously made room for me beside him in the lawyer's pen. To him I made bold to explain my predicament and in a few words he put me right. "Don't plead guilty, let them prove their case and call for the letter. If you get hold of that, you're all right. No one will ask you if you are admitted."

In a few minutes our case was called. The company's lawyer, after a short speech, which had the good effect of annoying Sir Robert, who seemed to be in a great hurry, put the *commissionaire* and the collector in the box. My mind was relieved when he handed me the letter, saying in an aside, that "he didn't want the full fine—only an example". When my turn came, I simply read the letter and asked the alderman if he did not think it rather hard that a gentleman should be brought into a police court for a mere inadvertence such as any one might commit; especially after such a fair and reasonable letter. The old man eyed C. for a moment, and then went for the company in a manner perfectly refreshing. Their lawyer tried to expostulate and made matters worse—"Outrageous piece of oppression"—"abominable pettifogging"—such were some of the judicial utterances, and he closed by saying that the defendant left the court with the sincere regret of the bench that he should ever have been brought there. Mr. Lewis turned to me with a pleasant smile and a pleasant wish that my first case might be the commencement of many successes, a wish that unfortunately has not been fulfilled.

For the rest of that day I imagined myself a second Cicero, and the climax of my pleasure was reached, when in the evening W. came back from Westminster, roaring with laughter, and showed me the "Echo" where, under the heading "Attempt at extortion by a railway company," the magistrate's remarks appeared in full, and the closing sentence was, "the defendant and his youthful solicitor left the court amidst applause, which was speedily suppressed." C., like a good fellow, took me out to dinner at Blanchard's, and a jolly evening celebrated the lucky termination of my first case.

## *THE GREAT RED PEPPER CASE.*

Underdale was in a frenzy of excitement. A dastardly outrage had been committed in the very midst of that usually quiet but somewhat dirty village, and there could not be the slightest doubt that the hand of a political agitator had worked the crime. That mystery of iniquity, the radicalism of Birmingham had penetrated even into these parson and squire-ruled precincts, and a political meeting, which the said parson and squire had deigned to honor with their presence, and at which the

pompous and portly member for the county was to have explained to the admiring rustics the glories and benefits of the Tory administration, had been nipped in the bud. In the twinkling of an eye the orderly and expectant concourse had been turned into a disorganized mob, and amidst one long and universal sneeze, the school-room was abandoned to the demon of suffocation, who seemed suddenly to have arisen therein. The parson, (who was decidedly "high church") had his cassock torn from his shoulders, the county member's gouty toe was stamped on three several times, and the squire emerged from the crush with an unmistakable black eye.

The physical cause of the catastrophe was plain and patent—some one had thrown a huge dose of cayenne pepper on the stove. Nor was there much doubt in anyone's mind as to who the culprit was. A certain semi-professional agitator, known as "the Colonel" and dwelling in the large neighboring town of Wardley, a hot bed of radicalism and dissent, had been present at the meeting. But no one had observed a suspicious movement on his part. He was not even near the stove, and he certainly appeared to be one of the most violent sufferers. That he had immediately made tracks for home on gaining the open air could not fairly be regarded as an evidence of guilt on his part, as he must have known that his character and record would expose him to vehement suspicion, and however innocent, he could not be expected to wait till the crowd had finished their nasal performances and were free to use their hands. After mature deliberation, therefore, the parson and squire determined to make no charge against him

for want of sufficient evidence. The village folk registered many a deep vow of vengeance against the artful villain if he should ever again appear amongst them, but it is needless to say that he displayed no sort of intention of revisiting Underdale till popular opinion had changed.

And here the whole matter appeared about to drop. Decent people condemned with sincere indignation the mean trick of a worthless loafer, though, if of the Liberal persuasion, they could hardly repress a quiet smile at the thought of the summary discomfiture of the rustic big-wigs. One man, however, was determined that the crime should not go unpunished and that he, personally, would chastise the son of Belial. This heroic individual was the village school-master, a very David, of diminutive stature and flaming zeal. He resolved to beard the Philistine in his den, and, proceeding to Wardley, attempted to horsewhip the "Colonel" on his native heath. His enterprise was not a brilliant success. The whip was quickly plucked from his feeble hands and he was packed off home, not without one or two slight bruises, the unavoidable results of a personal encounter with a man twice his size. Hereupon he instantly took out a summons for assault and battery and the seat of war was transferred from the remote precincts of Underdale to the more metropolitan locality of Wardley.

The judicial authority of Wardley was vested in the hands of some fifteen or twenty borough magistrates, who sat in regular rotation, five together, three times a week. They were honest, respectable men of impartial intentions, where politics were not concerned—but all

Tories. The oldest inhabitant could scarcely remember the day when a Tory sat as member for Wardley, and yet the borough bench still remained the exclusive property of that party, partly through the negligence of Liberal governments, who bestowed little attention on a constituency too faithful to resent neglect, and partly from the fact that the Liberal strength lay principally amongst the working classes and the lesser tradespeople, small fry, not heavy enough to bear the substantial dignity of a J. P. on their shoulders. When, therefore, the school-master determined to lay his griefs before the local magistracy, he had little reason to doubt a final triumph. When it was further announced that the Conservative Association had taken up his case and had retained the most formidable attorney in the district to prosecute, the Liberal began to feel that the affair was getting very like a persecution, and whilst by no means proud of their man, yet determined to see him through. Their secretary therefore placed the defence in the hands of a young lawyer who was fast becoming known as a successful advocate and who had, moreover, the qualities essential in such a case as this, of unlimited "nerve" and great irreverence for constituted authority. To escape conviction was impossible. Five average Wardley Tories, or, for the matter of that, five average Wardley Liberals, would find Abel guilty of the murder of Cain, if politics were involved, and here was a matter were even an impartial man might find grounds to convict. The only thing to be done was to make as much political capital out of the affair as possible and compel the magistrates either to listen to some very plain talk about Tories in general and local Tories in particular, or to lay themselves open to the

denunciations of the borough press for having "gagged the defendant's advocate," "stifled liberty of speech," etc., etc. We may remark by way of parenthesis, that an English attorney always feels very independent and masterful before a borough bench. As a professional man, he is the equal in social standing of any of the men before whom he is pleading, and, unless they happen to be his personal friends, cares not one straw for their good will or their anger.

On the appointed day, the police court was of course crowded. On the bench the magistrates whose term of duty it was, were supported by most of their brethren ; one or two county magistrates were also present, amongst them the Underdale squire. He took occasion to remark that he was not there with the intention of acting judicially, to which he received the curt retort from the Liberal lawyer, that, as he had no jurisdiction in the borough, he had no business on the bench, and, in fact would have shown more decency in staying away. This, of course, led to a preliminary wrangle, and had the result of making all the magistrates very ferocious. The prosecuting attorney himself, old hand as he was, got a little angry and consequently examined his client with rather less than his wonted skill. In cross-examination, the little school-master completely broke down. He admitted that he commenced the affray by a premeditated attack and that the defendant only used sufficient force to drive him away, closing with a picturesque account of the red pepper incident, so dolefully given that one or two of the magistrates even could not repress a smile and the crowd in the court house roared with delight. Cheered by this unexpected success, the

defendant's attorney suddenly changed his tactics, and, instead of the red hot speech he had prepared, addressed the bench in a quiet matter of fact way, pointing out, what could not be gainsaid, that there was absolutely no case made out and that the defendant was entitled to an immediate acquittal. To close the whole affair, he declared that he would put the defendant himself in the box and his learned friend could cross-examine him to his heart's content. But his learned friend by no means appreciated the proffered privilege and strenuously objected that the defendant was not competent to give testimony. He knew the "Colonel" to be a keen, unscrupulous and practised witness and felt that even his searching questions would be rained in vain upon such an old intriguer. After much debate, the bench, on the advice of their clerk, though sorely against their will, decided to admit the evidence. They could not, in fact, do otherwise, as time and again defendants had been heard without objection in cases of assault. Accordingly the "Colonel" mounted the witness stand, and after a short examination upon the actual facts of the case, was handed over to the tender mercies of his opponent. S. was in a dilemma. Had he possessed any definite information on which to work, any specific facts upon which he could hope afterwards to catch his man in perjury, he would undoubtedly have attacked him with all his accustomed vigour and skill; but failing this, he chose discretion as the better part of valour, and declared he had no questions to ask, adroitly insinuating that it would be a mere waste of time to question a man whom nobody would believe.

The case being ended, the magistrates of course did

their part of the work, convicting the defendant and imposing upon him the heaviest fine in their power,—forty shillings if we remember rightly. The paltry sum was instantly paid, and the Liberals retired jubilant at the admirable specimen of magisterial injustice thus provided for denunciation and at the large political returns which the few pounds spent on the trial would bring in. The poor school-master got more kicks than halfpence, being roundly abused by his own party for his failure in the witness-box. A course of reflection upon the ingratitude of political friends subsequently converted him into a Liberal, a conversion which somehow coincided with his removal from Underdale to a mastership in a dissenting school at Wardley, whilst the "Colonel", by accounts received only the other day, is now reaping a golden harvest as a conservative registration agent and stump speaker, in view of the approaching elections.

## HOW MR. H. BECAME A JUDGE.

Mr. H., Q. C. was a very successful but a very discontented man. Beginning as an attorney's office boy, his first ambition was to become an attorney. When he had gained this point, he yearned to be a barrister. The wig assumed, he straightway was eager for the silk gown. This donned, he wanted a fortune. The fortune made, he wanted a position in "society" and married accordingly. And now, all else gained, his restless ambition desired a seat on the bench. For more years than he cared to remember he had led his circuit. For at least ten years he had been recognized as one of the half dozen leading advocates at the bar. Hard work had been his lifelong habit, and the regular and impartial ease of judicial routine appeared by comparison a haven of rest, for which he could well afford to make the sacrifice of income involved in promotion to the bench. So it came to pass that on the clear October morning with which our story commences, the subject of Mr. H's reflections, as he walked down to chambers, was "how shall I become a judge?"

None of the ordinary obstacles to promotion stood in his way. His reputation as a great advocate was, as we have said, established. After a long "outing" his political friends were again in power, and though he had never sat in parliament, yet he had thrice carried the Conserv-

ative colours through hot battle to honorable defeat in a perversely Radical constituency. He had spent much money for the party, and he had friends in high places who would not let his merits be forgotten. But (there is always a fatal "but" in these cases) the chancellor was a great lawyer, and a most conscientious man. He never had appointed, he had repeatedly said, he never would appoint, any man to the bench who was not a thorough lawyer. Now, Mr. H., Q. C., was not even an average lawyer. His practical mind had always abhorred studies which bore no immediate, evident fruit. No attorney would ever have thought of briefing the "learned" gentleman in a case where much law was required. He was pre-eminently a *nisi prius* man, irresistible with a jury, weak before the court "*in banc*". How should this difficulty be got over? This was troubling his mind, and as he entered chambers his ancient clerk at once perceived that the "old man" was not in the best of humours.

On Mr. H.'s desk lay a new and bulky brief. He glanced first at the fee, and then at the title, and muttering "that confounded Fraser case again!" turned to his letters, one of which particularly interested him. It was from his firm friend, the attorney-general, and contained the news, received at first hand, that old Judge Jones had definitely made up his mind to take his pension and retire at the end of the year. How was Mr. H. to step into the old judge's shoes? Whilst still pondering over this problem, Mr. H.'s eyes fell upon the Fraser brief, and as with a flash of light he saw his way clear. This "Fraser v. Jackson" case, it must be explained, was a cause belonging to that difficult class of which

"Fletcher v. Rylands" may be taken as an example. Mr. H. had led for the plaintiffs at Assizes. The case had then gone to a referee, and now came up again upon the referee's findings for argument before the full court. The brief "*in banc*" would assuredly never have been intrusted to Mr. H., but for the fact that the plaintiffs were already so exhausted by the prolonged litigation that their solvency was becoming doubtful, and the attorney, one of H's oldest clients, felt that he could rely upon H. (who, with all his defects, had a somewhat higher standard of professional honor than most leaders at the bar) to overlook the smallness of the fee, and do the best he could. "H. knows," said the attorney to his *factotum*, when the question was discussed between them, "that I always give him liberal fees when I can, and I think he is man enough to take small allowance for once." It is possible that the attorney might have reckoned without his host but for the happy coincidence that the case furnished H. with the very chance he wanted. Here was a purely legal argument of the highest kind, in which several public and private Acts of Parliament had to be reconciled with each other, and had all to be brought into subordination to one of the most subtle of legal principles. It was a case, too, of great commercial importance; one that would be sure to enlist the careful attention of the judges, and if H. could only play his part well, and appear in the new character of a genuine lawyer, the chancellor's ban might be lifted, and the coveted ermine attained.

Filled with this hope, H. settled down to read his brief. He found it diffuse, full and careful. Cases were cited by the dozen, and no point or difficulty

seemed to be overlooked. Next day H. deliberately, and to the extreme surprise of his clerk, abandoned a sensational divorce suit, and spent his time in the Temple library. For a week he studied as he had never studied before, and at last he felt the glow of conscious mastery, and knew that he had the whole case at his finger's ends.

When the day of hearing arrived both the junior counsel (a man as old as H. himself, and a better lawyer) and the attorney were surprised alike at H's fluency and confidence in consultation, and at his extreme urbanity. The attorney, unaccustomed to compliments from queen's counsel, almost blushed when H. told him the brief was the best he had ever read, and the junior speedily perceived that for once he would not have to coach his leader. At length the argument commenced. The chief justice and Blackburn started off as usual with interruptions, but the chief, who could listen quietly when he once felt sure that the speaker was worth listening to, soon became silent, and treated Blackburn to a neat snub that had the desired effect. H. was at his best that day. All the eloquence and skill of the mere advocate were subdued and unobtrusively employed to render lucid an unbroken and logical argument, which seemed to demonstrate itself. For nearly three hours he held the close attention of the court. His opponent was a far superior lawyer, but he was altogether unprepared for such an attack. When the argument was finished it was evident that the court was strongly with the plaintiffs, though the complexity and importance of the case demanded a "C. A. V." and written opinions. Time to consider being duly taken, at the end of two

months (an extraordinary delay in an English court) judgment was given for the plaintiffs. The opinions alone occupy more than one hundred pages of the Law Reports, but no case was cited and no point advanced by any of the judges which had not been taken by Mr. H. in argument.

On his way home after the hearing, H. was overtaken by the chief, who paid him a warm compliment, adding with a little sub-acid smile, that the argument had surprised him as much as thunder out of a clear sky. The chancellor of course heard from friendly sources all about H.'s thorough mastery of mining law, and when old Jones, true to his word, retired, Mr. H., Q. C., became Sir W. H., one of her majesty's judges. He still ornaments the judicial bench, of which he is one of the most useful members, and the only peculiarity remarked about him by the critics of the bar is the frequency with which he fetches in "Fraser v. Jackson," head and shoulders, to illustrate any and every disputed point of law.

## A FEUDAL LAWSUIT.

The bishop of Cahors, in Southern France, was a high and mighty ecclesiastical potentate in his day, a temporal count, having amongst his vassals the neighboring baron of Cessac. On the day of the installation of each bishop, the baron for the time being had to perform a part of conspicuous humiliation. It was his duty, and the tenure upon which he held his fief, to meet his episcopal master without the city walls, and bareheaded, barefooted, minus his mantle, to lead the bishop's mule to the cathedral. The day's proceedings closed with a banquet at the palace where the baron waited at table, receiving as his due the buffet or sideboard used at the feast, and the mule.

Mgr. de Popian however, who became bishop of Cahors in 1604, not content with the accustomed humiliation, increased the indignity and compelled his reluctant vassal to lay aside his sword and girdle. He also—and this was "real mean" on his part—added injury to insult, and instead of the silver-gilt buffet usually decorating the episcopal feasts, and which was a substantial balm to the wounded feelings of his lordly vassal, tried to palm off on him a second-hand affair, picked up perhaps in some pawn-shop. This proved the

proverbial "last straw." De Cessac straightway brought suit, and on May 10th in the same year got a judgment from the court of first instance sitting at Toulouse by which the bishop was condemned to deliver to him a buffet of the accustomed magnificence or in default to pay its value. This was subsequently fixed by experts at the sum of 3123 livres. For some reason not appearing in the records, the bishop backed down and accepted the judgment. Doubtless when singing the Magnificat in after days, the "*deposuit potentes et exaltavit humiles*," had a somewhat personal sound in his lordship's ears.

His successor however, Pierre de Habert, instituted in 1627, was in no mind to be amerced in 3,000 livres for the sake of an empty ceremony. He therefore dispensed with any formal entry into his see, and not having called upon De Cessac for any homage thought himself safe. But the baron was just as practical a man as the bishop, and being poor, was quite willing to put his pride in his pocket for a day, for the sake of a handsome addition to his revenues. He sued the bishop, offering his homage and demanding a recompence, and again was victorious, recovering a judgment for the value of the buffet ascertained as above, subject to the liability to perform his homage when called upon.

The Bishop now appealed, not only from the present judgment but also from the previous decision of 1604, and a great wrangle of lawyers arose. It would be wearisome to go through all the arguments as reported in the *Arrêts de Toulouse*, but we cannot avoid noticing the skill and ingenuity displayed on both sides, and the wealth of classical learning by which so dry a

subject was adorned and illuminated. Virgil, Pliny, Seneca, Plutarch, Juvenal, are only some of the authorities quoted. The origin of the custom of uncovering the head in token of reverence is, as the French say, "*approfondi*", and we are shown that the "cap of liberty" derives its significance from this very custom. The incident of the conspirators who after the death of Cæsar ran into the forum with caps on their pikes is appositely cited in this connection. A great deal of curious information about homage, and many interesting historical points can also be found scattered through the yellow pages of the old book, but we must pass these over and content ourselves with recording the final result, which was in favor of the baron, the principle of the decision being that the duties of baron and vassal were reciprocally binding, and the lord could no more dispense with homage and its incidental recompence, than the vassal could refuse service.

# A LEGAL ROMANCE, OR THE SWINFEN CASES

Some thirty years ago there dwelt in Staffordshire an old country gentleman named Sam Swinfen, the possessor of an estate valued at between £60,000 and £70,000. He had inherited his property somewhat unexpectedly, and was accustomed to complain of the ruinous condition in which he found it, the Manor House, Swinfen Hall, being so dilapidated as to be almost uninhabitable, and the most valuable article therein being, as he averred, a half barrel of sour beer in the cellar. This state of things he ascribed to the extravagance of his predecessor in the title, and for many years he and his wife passed a secluded life in two rooms of the old mansion—on her death in 1848, however, he invited his only son, H. I. Swinfen, to take up his abode with him. This the younger man did, bringing with him his wife, with whom he had contracted a romantic marriage against his father's approval. The old sore was healed, and a complete reconciliation took place. The son set about improving the estate, with marked success, and all went well till the latter's sudden death in 1854. The father was now eighty years of age, and in a state of physical, and as it was then thought, mental paralysis. In fact, friends of the family, writing in the widow's behalf in answer to letters of

condolence, stated that "old Mr. Swinfen was happily spared the shock, being incapable of understanding the loss he had sustained." Under these circumstances the widow, who, let us state at once, is the heroine of our tale, actually took some steps to test his sanity, but the doctors differing, nothing was done.

The old gentleman, in fact, was not insane. He knew that in default of a will the estate would pass to the heir-at-law and representative of his predecessor, Captain Swinfen, of the Sixth Dragoon Guards, and after due consideration he gave instructions for, and executed a will, whereby he devised the whole property to the widow. The will was made on July 7, 1854, and on the 26th of the same month the testator died.

Thereupon, Captain Swinfen cast about for means of upsetting the testament, and invoked to his aid the old familiar friend of lawyers—"mental incapacity." He filed a bill in Chancery, and by consent an issue *devisavit vel non* was sent down for trial, and came on for hearing before Creswell, J., and a special jury at Stafford Assizes on Saturday March 15, 1856. For the widow, plaintiff on the issue, Sir F. Thesiger, afterwards Lord Chancellor Chelmsford, was specially retained to lead, and on the other side appeared the famous Chief Justice Cockburn, then attorney-general.

On the first day's hearing the ladies who had written the letters after the son's death were called, and in cross-examination admitted their previous statements as to the old man's incapacity to recognize his loss, he having actually stated to one of them that the person

dead was Mrs. Swinfen. Other damaging points also were made against the will, and Thesiger was so impressed that he sent for the widow to his lodgings, and strongly urged her to leave the matter in his hands to settle as best he could. It appears the judge had privately intimated to Thesiger his opinion that the case was going against him, and Thesiger led the widow to understand that the defendant offered to settle on her an annuity of £1,000 if she would give up the estate. This, with the courage and pertinacity she showed from beginning to end of the litigation, she absolutely refused. She was ultimately prevailed upon to take the night to think the matter over, but next morning saw no change in her determination, and she telegraphed to Thesiger "offer refused." We may judge then her astonishment, when on arriving at court on Monday morning, she was met by her counsel leaving the court room, and coolly informed that he had done the best he could for her, and had settled the matter on the terms originally proposed. Sir H. Burrard was with her, and demanded of Thesiger by whose authority he had acted. "By yours," replied Thesiger. "The deuce you did!" exclaimed Sir Harry. Thesiger, however, marched off, and the widow was left to digest the situation as best she could.

But if the heir had a verdict, the widow had possession, and to possession she clung. From the beginning she had asserted that she would stand or fall by the will, and at this crisis she rose to the occasion like Maria Theresa, and, abandoned by all, she quietly returned to the Hall, and awaited events. Speedily possession was demanded and refused. The heir's next step was to

take a rule *nisi* for attachment against her. This was quashed on the ground of insufficient proof of disobedience (*Swinfen* v. *Swinfen*, L. J. R. 25 C. P. 303), but the court, consisting of Cresswell, Williams, and Willes, J. J., all seemed to agree that the compromise was binding.

Another rule accordingly was taken out (*Swinfen* v. *Swinfen*, L. J. R., 26 C. P. 97), in answer to which Mrs. Swinfen made an affidavit setting out all the facts. Fortunately for her, Crowder, J. happened to be sitting this time, and he held distinctly that the mere relationship of counsel and client did not give a general power to compromise, and that there was no special authority shown, but on the contrary an emphatic repudiation. The other judges held to their previous views, but the practice of the court being to confirm rules for attachment only when the judges were unanimous, the rule fell through, and the widow escaped as by fire.

The heir, who evidently had more confidence in the verdict already obtained than in the result of a fresh trial, went to chancery with a supplemental bill for a decree for a specific performance of the compromise (*Swinfen* v. *Swinfen*, 27 L. J. R. Eq. 35), and now a fresh actor appeared upon the scene, in the person of Kennedy, a provincial barrister practising at Birmingham, who had taken up the forlorn widow's cause, and who proved a champion very different from Thesiger. The Master of the Rolls, Romilly, in an able and exhaustive judgment, rejected the compromise, taking the same view as Crowder, that counsel had no power to give estates away at his own discretion He instanced

with approval a case within his own knowledge where a great advocate had in open court refused to consent to a compromise actually agreed to by his client, on the ground that the client did not understand the sacrifice he was making, and refusing the specific performance prayed, he ordered a new trial.

This judgment was the first crumb of comfort that had fallen to the widow's lot, but was, of course, far from pleasing to the heir, who appealed—only to get an excoriation from the lords justices (*Swinfen* v. *Swinfen*, 27 L. J. R. Eq. 69). Knight Bruce observing that the heir's attempt was only a *pis aller*, and varying the Master of the Rolls' decision in the widow's favor, so far as to give her costs of the suit.

The new trial accordingly came on at Stafford in March 1858. The evidence of the letters remained, but a mass of other evidence was put in, all tending to show that the testator's mental faculties, if impaired at all, were not so damaged as to deprive him of testamentary competency. The judge summed up against the widow, but the jury were not influenced by his lordship, and returned a verdict establishing the will, a result due principally to the able advocacy and thorough mastery of the case displayed by Kennedy.

The heir was not yet shaken off however. He went to the Master of the Rolls for a new trial (*Swinfen* v. *Swinfen*, 28 L. J. R. Eq. 849), but far from getting it the Master stated that had the verdict been otherwise he would have sent the case down again. In the course of argument Kennedy went far and wide for instances

of physical imbecility combined with mental competency. Many eminent characters in history were referred to, amongst others the great Marlborough, who stricken with paralysis, his mouth awry, unable to articulate, was yet competent to make a most important codicil just before his death. Lord Eldon, the famous chancellor, Sir Herbert Jenner Fust, who suffered from the very disease which affected the testator, and a recent judge (not named) who, though struck with hydrocephale, yet performed his duties "with transcendant ability" to the very last. The whole report, in fact, is well worth reading by the student of medical jurisprudence.

The writer ventures to think, from his limited observation of human nature, that the desire for vengeance is usually stronger with the fair sex than with their *soi-disants* lords and masters. Mrs. Swinfen was no exception to this rule. Flushed with victory, she now entered the lists against her late counsel, the august chancellor himself, and sued Lord Chelmsford for damages for a "fraudulent" compromise against instructions. *Swinfen* v. *Chelmsford*, L. J. N. S. Fxch. 383. This, however was a little too much, and the court unanimously dismissed her suit, and settled by its decision the powers and responsibilities of counsel. And here, if this were a novel, and not a statement of facts, would come the obvious and happy conclusion, viz.: the marriage of the plucky widow to her devoted advocate, and the usual notice in the *Times*, "St. George's Hanover Square—Swinfen to Kennedy. No cards." But unfortunately the affairs of mankind seldom end correctly. Mrs. Swinfen did not become Mrs. Kennedy, but she did become Mrs. Brown, and thereupon followed another

great suit, viz: the leading case of *Kennedy* v. *Brown and wife*, 32 L. J. R. C. P. 137. Kennedy alleged that having given up his other practice, and devoted himself wholly to the advocacy of the widow's rights, both at the bar and by writings and pamphlets, "designed to render her cause popular," she had agreed in return to pay him a fee of £20,000 in the event of success, and for this sum he sued. Upon the argument English common lawyers became civilians for the nonce, and went deep into the mysteries of the "*lex cincia*," and the old usages of the Roman patrons and advocates. Erle C. J. presided, and delivered perhaps his finest judgment, settling what in fact had hardly before been seriously doubted, that an English barrister's fee is an *honorarium*, and cannot be made the subject of a legal claim. He was terribly hard on poor Kennedy, but as a specimen of judicial eloquence his deliverance can hardly be surpassed, and we cannot resist the temptation of quoting therefrom the following description of a model advocate; "We are aware that in the class of "advocates, as in every other numerous class, there will "be bad men taking the wages of evil and therewith "also for the most part, the early blight that awaits "upon the servants of evil. We are aware also that "there will be many men of ordinary powers perform-"ing ordinary duties without praise or blame; but the "advocate entitled to permanent success must unite high "powers of intellect with high principles of duty. His "faculties and acquirements are tested by a ceaseless "competition, proportioned to the prize to be gained, "that is, wealth and power and honor without, and ac-"tive exercice for the best gifts of mind within. He is

" trusted with interests and privileges and powers almost " to an unlimited degree. His client must trust to him " at times for fortune and character and life. The law " trusts him with a privilege, in respect of liberty of " speech, which is in practice, bounded only by his own " sense of duty, and he may have to speak on subjects " concerning the deepest interests of social life, and the " innermost feelings of the human soul * * * If an ad- " vocate with these qualities stands by the client in the " time of his utmost need, regardless alike of popular " clamour and powerful interest, speaking with a bold- " ness which a sense of duty can alone recommend, " we say the service of such an advocate is beyond all " price to the client, and such men are the guarantees " to communities of their dearest rights, and the words " of such men carry a wholesome spirit to all who are " influenced by them. Such is the system of advocacy " intended by the law; requiring the renumeration to be " by gratuity." And he then proceeds with little difficulty to show, from a long course of precedent, that such an action as the present could not lie.

After this nothing was left for Kennedy but ruin, to which he added disgrace, by certain unsavory statements made in the bitterness of despair. He was discommoned for six months by the Benchers, and died broken-hearted, perhaps the only instance of a lawyer who saved his client and ruined himself.

As for Mrs. Swinfen, she may, for all the writer knows, still be living full of years and honours at Swinfen Hall, but if so, she is the sole survivor of the *dramatis personæ* in the "Swinfen cases." Thesiger,

Cockburn, Romilly, Knight Bruce, Erle, and all the other erst famous advocates and judges who figured in this long litigation, have now passed to a world where, it is to be presumed, briefs and special retainers are unknown, and new trials are not allowed.

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## A FORGOTTEN TRAGEDY.

In these days when dissatisfaction with the slow, oftimes halting course of American criminal law is so generally and loudly expressed, it may be worth our while to look back to the annals of the past, and examining its long and ghastly record of judicial murders, to pause and see if the old saw "better that nine guilty should escape than that one innocent should perish" is not, after all, exactly true. It is not by the famous instances which are every-day citations that we can judge of the number of victims that have been immolated on the altar of a hasty vengeance, miscalled justice, but by those long forgotten tales of wrong that lie hidden in the dusty recesses of English archives.

Let us drag one such story to light, a story strange in all its circumstances, but singular not so much in its terrible injustice as in the completeness with which that injustice was afterward revealed—too late for human redress. This is no *cause célèbre*, but the tragedy of a quiet country side, one sample of hundreds long since forgotten by mankind.

On Thurday, August 16, 1660 (Car. II, D. G. Rex), William Harrison, a man seventy years of age, and the trusted steward of Lady Campden, of Campden Hall, Gloucestershire, went from the Hall to the village of Charringworth, about two miles distant, to collect rents. He did uot return at his usual hour, and, night approaching, his wife sent a man servant, one John Perry, to meet him and escort him home. Neither master nor servant reappearing, Edward Harrison, the steward's son, started very early next morning for the village, and on his way met Perry, who told him he had made inquiries at Charringworth, but Mr. Harrison was not there. Thence they went to Ebrington, and after various inquiries found a poor old woman, who whilst out "leasing" (gleaning), had picked up the missing man's "hat, band and comb," hacked with a knife and covered with blood, in the highway. A general search now took place throughout the district, but no further traces of the murder could be found, nor was the body discovered.

Perry's absence from the Hall over night caused suspicious to attach to him, and he was brought before a justice of the peace and examined. He stated that after starting for Charringworth he grew afraid of the darkness, and meeting William Reed turned back with him

as far as the Hall gate, where they parted. After this one Pearce came along, and he started a second time with him, but his heart failing him, he again returned and went into the hen-roost, where he lay for about an hour, but slept not, and on the clock striking at mid-night he rose and started a third time for the village. He lost his way in a fog, and spent the night under a hedge. Before day-break he resumed his journey, and after calling at a house there, started back, and met his master's son, as before narrated. Reed and Pearce corroborated his statements as to their meeting him. Being asked "how he, who was afraid to go at nine, became so bold as to go at twelve?" he answered that at nine it was dark, but at twelve the moon shone. Asked again "why, returning twice home, he went not into the house to know whether his master were come home before starting a third time?" he answered that he knew he was not come home, because he saw a light in his chamber window, which never used to be there so late when he was at home. His explanation however was not considered satisfactory enough to clear him, and he remained in custody till the following Friday, August 24th, when he stated "that if he were again carried before the justice he would discover to him what he would discover to nobody else." He was accordingly again placed before the rural Solon, and stated that Harrison had been murdered, but not by him. Being urged to speak out, he said that it was his (Perry's) mother and brother who had committed the murder. Aghast at this, the magistrate cautioned him earnestly to beware what he said, but he persisting, his confession was ultimately received. He said that ever since entering Harrison's service his mother and brother had urged

him to help them to money, and had finally suggested that he should give them notice when Harrison went to receive the rents, and they would waylay and rob him. On the morning of the murder he met his brother, and told him of his master's journey, and in the evening when sent to meet Harrison he found his brother lying in wait. They walked together to the church-yard, a short distance from the Hall gates, and there parted, John going through the yard, and his brother following the highroad which bent around the church. At the other side they met again, and kept company till they reached a gate leading into the Coneygre grounds, through which was a short cut to the Hall for those having a key. Approaching, they saw some one pass through the gate, and concluding it was his master he left his brother to enter the Coneygre alone, and walked up and down a short while. Then entering the enclosure he saw Harrison on the ground, his brother, Richard Perry, kneeling on him, and his mother, Joan Perry standing by. Harrison was not then dead, but his brother strangled him, and took a bag of money out of his pocket. They carried the corpse into the garden, and after consulting what to do with it, agreed to throw it "into the great sink by Wallington's mill, behind the garden." The prisoner however went up to the house to guard against interruption, and he did not see either his mother or brother again that night. It was after all this that he returned to the Hall gate and met Pearce. The hat, band and comb, he had slashed with his knife, and thrown into the highway to raise a false scent.

Upon so circumstantial a confession as this, John and Richard Perry were of course arrested, and brought up

for examination the following day. Both stoutly denied the charge, but in their presence, and in the face of their denials and appeals, John Perry adhered to his statement, which, to the excited minds of the rustic bystanders, derived corroboration from the following incident. On the return from the justice's house "Richard " Perry, following a good distance behind his brother " John, pulling a clout out of his pocket, dropped a ball of " inkle, which, one of the guard taking up, he desired him " to restore, saying 'it was only his wife's hair lace,' but " the party opening it, and finding a slip-knot at the end " went and showed it to John, who was then a good " distance before, and knew nothing of the dropping and " taking up of this inkle, but being showed it, and asked " whether he knew it, shook his head, and said 'yea, to " his sorrow, for that was the string his brother strangled " his master with'." But a still more damning proof was to follow. Next day, "being the Lord's Day," the prisoners were brought to church, the parson doubtless thinking that his persuasive powers might succeed where the rigours of the law had failed, and on their way they were met by two of Richard Perry's children, who, running to meet him, "straightway both their noses fell a bleeding," a circumstance which, the chronicler tells us "was looked upon as ominous." Doubtless after this the guilt of all three was an accepted fact in the neighbourhood, which it would have been impiety to question.

And as if murder were not enough, a fresh crime was laid to their charge. In the previous year £140 had been stolen out of the Hall, under circumstances which showed a concerted plan between some inmate and parties outside. The robbery Perry now confessed to

as being arranged and carried out between himself and his fellow-prisoners, and for this, as well as the principal offence, they were all committed to stand their trial at the approaching Assizes.

The *corpus delicti* however was still missing. The pool mentioned by Perry, and all other possible and impossible hiding places in the neighborhood were searched, but no body could be found.

In September the assizes were held. The presiding judge refused to try the charge of murder in the absence of any evidence of the disposal of the body, but to the charge of robbery all three pleaded guilty. They claimed and obtained the benefit of the Act of Oblivion, passed on the occasion of the king's restoration, and their plea of guilty was probably entered with a view to this, but none the less, it remained a most damaging fact against them, as they found afterward to their cost. It should also be noted that on this occasion John Perry persisted in his confession of the murder.

They remained in custody till the spring Assizes, when they were again arraigned on the capital charge, and pleaded "not guilty." John Perry said he was mad when he made his confession, and knew not what he said. It was however put in evidence, and they were actually convicted, and in due course executed on Broadway Hill, in sight of Campden Hall. The mother was the first to suffer, "being reputed a witch, and to have so bewitched her sons they could confess nothing while she lived." Richard's turn came next, and he died imploring his brother "for the satisfaction of the whole

world, and his own conscience, to declare what he knew." Last John mounted the gallows, "with a dogged and surly countenance." his dying statement being that "he knew nothing of his master's death, but they might hereafter possibly hear." The victims were hanged in chains, Harrison's son standing at the foot of the gibbet the while, and then the three corpses were left, in summer's heat and winter's frost, till the grinning skeletons and clanking fetters made the hill a place of dread. Truly our ancestors had no figurative conception of "the terrors of the law."

Some two years after these events the country-side was astonished by the return of William Harrison himself—no ghost, but a living, human being. His account of his disappearance was strange in the extreme. He stated that he had been waylaid, and having only £23 with him, his captors, disgusted with the smallness of their booty, had carried him off and sold him to a sea captain at Deal for £7. By the captain he was sold to Turkish slave-dealers, and ultimately became the property of a physician at Smyrna, in whose service he remained nearly two years. His master, being on his death-bed, freed him, and gave him a silver goblet. In exchange for this he procured a passage for Lisbon. There he found some Englishmen, who, in pity for his sufferings, provided him with a passage to Bristol, and thus, at last, he regained his long lost home. Whatever might be the truth of this story, two facts were indisputable: One, that on the day of his disappearance he had only received £23, this having been thoroughly investigated, and proved on the trial of the Perrys. And the other, that at the same time he had in his house a

much larger sum of money. There was no irregularity whatever in his accounts, and in fact, he resumed his accustomed stewardship, and discharged his duties with exact fidelity till his death some years afterwards. He reduced an account of his abduction and travels into writing, in the shape of a letter to Sir Thomas Overbury (descendant of the more famous Overbury), and the curious may consult the letter itself, which appears *in extenso* in the document from which we have taken our narrative.

We find ourselves unable to suggest any solution which answers to all the facts of this case, nor indeed are we greatly anxious to do so. We have simply wished to furnish a practical example of the old-fashioned system of "rough and ready justice," of which some traces are still left in the criminal procedure of England, and to which, in the United States the adherents of Judge Lynch have furnished, it is to be feared, many a close parallel.

It only remains to quote our authority. It will be found in the well-known and reliable Harleian Collection, Vol. III (4th ed.), in a paper entitled "A true and perfect account of the examination, confession, trial, condemnation and execution of Joan Perry and her two sons, John and Richard Perry, for the supposed murder of William Harrison, Gent; being one of the most remarkable occurrences which hath happened in the memory of man; sent in a letter by Sir T. O. (Thomas Overbury) of Burton, in the county of Gloster, Knight, and one of his majesty's justices of the peace, to T. S. (Thomas Shirley), Doctor of Physick in London.

Likewise, Harrison's own account, how he was conveyed into Turkey, and there made a slave for about two years, and then his master, which brought him there, dying, how he made his escape, and what hardship he endured; who, at last, through the providence of God, returned to England, while he was supposed to be murdered; here, having seen his man-servant arraigned, who falsely impeached his own mother and brother as guilty of the murder of his master, they were all three arraigned, convicted and executed on Broadway Hills, in Glostershire." (London: printed for Rowland Reynolds, next Arundel Gate, over against St Clement's Church, in the Strand, 1676.)

## THE CASE OF THE NINE MEMBERS.

March 2, 1629, was a memorable day in parliamentary history. On that occasion Speaker Finch, vainly endeavoring to leave the chair in pursuance to a royal command, was forcibly held therein, whilst an exasperated Commons passed resolutions against "Popery and Arminianism, Tonnage and Poundage," and Sir John Elliott, in tumultuous debate, declared that "whosoever goeth about to break parliaments will break him!" Thus we find that the first attempt at that systematic obstruction with which the Irish party have lately been so vehemently reproached, was made by a servile speaker, and was nipped in the beginning by a resort to physical force. A similar expedient was clearly out of the question on the later occasions, it being one thing to effect a forcible detainer on the person of an ancient lawyer, and quite another to carry out a forcible ejectment against some scores of lustry Hibernians. The king however in his turn resorted to "*vis major*," and nine of the most prominent members of the House, to wit, the said John Elliott, and Hollis, Hobart, Hayman, Selden, Coriton, Long, Stroud and Valentine, speedily found themselves ensconced in prison. In due course they sued out their writs of *habeas corpus*, to which their jailor returned as his authority for their imprisonment, two warrants, one signed by twelve lords

of the Privy Council, and alleging no cause, and the other under the king's sign manual. The latter specified their incarceration to be "for notable contempts by them committed against ourself and our government, and for stirring up sedition against us."

In Easter Term the first writs, those taken out by Long and Stroud, came on for argument before a full court of King's Bench, presided over by Hyde, C. J. Ask appeared for Stroud, and had little trouble in disposing of the Privy Council warrant, the want of cause therein being clearly against the petition of right. Upon the second, his preliminary contention was that the king himself could not imprison any man, and in support of this he cited Markham and Fortescue, "*De Laudibus Legum Angliæ*." His pretension was that every man wrongfully imprisoned had a right to an action for false imprisonment, but no such action would lie against the king, who, according to the old maxim, could not be a wrongdoer, *ergo* the king could not imprison. Thus he ingeniously endeavored to turn the most despotic maxim of our books against the despot. From this he proceeded to his main argument, viz., that the cause assigned was too general and uncertain, and here we have, anticipated, the well known case of the general warrants under Geo. III. He strongly urged that so far from "sedition" being an offence known to the law, the word itself in a substantive form was not to be found in any statute or precedent, and quoted many authorities upon the vice of generality. He was followed by Mason, afterward recorder of London, who did little but reiterate Ask's able argument.

For the king, Berkley, Serg't, answered successfully the objection that the sovereign could not imprison, but calling to his aid the ancient writers, Bracton and Britton, he went dangerously far, and sought to establish a general coercive power, laying it down that "in "matter of government, to avoid commotion, the king "ought to use his coercive power against those that are "enraged." "It is a case well known," he said, "that if "a house be set on fire every man may pull down the "next house for prevention of a greater mischief, so it "seems concerning the incendiaries of state, they ought "to be restrained lest others should be stirred up by them "to the same combustion." Upon the generality of the return, he drew a distinction between the certainty needed in a return and in an indictment, and cited the ordinary return upon certain writs, the very names of which amaze our modern ears, such as "the taking of "an apostate, the amoving of a leper, the burning of an "heretic, and *the burning of an idiot*," and finally, returning to his high coercive notions, he urged that the prisoners should be restrained of their liberty, that the common wealth might not be damnified. Sergeant Davenport followed in the same strain, and upon the close of the argument the case stood over till Trinity Term.

On the first day of Trinity the writs of the other prisoners came up, and for them Littleton (who afterward became chief justice of the Common Pleas, and who, as solicitor general, argued for the crown in the *Ship Money* case) appeared. Admitting the king's power to commit he proceeded to state, as the main ground on which he relied, a proposition which is now, we

apprehend, the fundamental principle in *habeas corpus* cases, viz., " that no freeman that is imprisoned only for " misdemeanor before conviction may be detained in " prison without bail, unless it be in some particular cases " in which the contrary is ordained by any particular " statute." From this he proceeded to examine whether the return disclosed any thing more than a bailable misdemeanor, and at once fell foul of that unlucky word " sedition." In a lengthy disquisition as to the true meaning of this term he quoted Livy, Tacitus, a host of passages from the Bible, and Bacon's Essay " of Seditions and Tumults," " which whole essay," he kindly says, " deserves the reading," and arrived at the conclusion that sedition was merely a synonym for discord. He next showed, at still greater length, that the word had no different signification in law, and herein bore hardly upon Bracton and his fellows, whom he termed obsolete authors, good for ornament but of no binding authority, and (most fatal objection of all) too prone to follow the civil law. He granted that the cause in the return was not traversable upon the present occasion, but contended and cited the reports to prove that there must at least be so much in the return as if false would give the party aggrieved an action on the case. Of Berkley's coercive power be made short work, and as to the house-on-fire illustration " observe the " true consequence of this argument—if my house be on " fire my neighbour's must be pulled down. Mr. Selden " is seditious, *ergo* Mr. Herbert, his neighbour, must be " imprisoned." Finally to the Statute of Westminster, with its provision that a man taken by commandment of the king should not be replivisable, he replied, " as " oft as that statute is cited I will always cry out the

" Petition of Right! The Petition of Right! As the king " of France cried out, nothing but France! France! when " all the several dominions of the king of Spain were " objected to him." No one followed Littleton, the counsel for the other prisoners being content to rely upon his argument.

A few days after the attorney-general, Sir Robert Heath, replied for the king, but signally failed to rebut Littleton's learned and convincing discourse. After boldly claiming that the Petition of Right, being simply a confirmation of the ancient rights and liberties of the subject, did not in any way affect or help the prisoners' case he endeavored to rehabilitate the battered word " sedition." Referring, amongst his other quotations, to the town clerk of Ephesus, " who knew not how to answer for this day's sedition," he observed, in passing, " that he wished the greater ones, to-day, were as " circumspect as he was," a remark, which read in the light of the king's ultimate fate, has an application some what different from that intended by the learned gentleman. Ultimately flying to his last resort, the pretended coercive power, he closed in this wise: " If any danger appear to you in the prisoners' bailment I am confident that ye will not bail them, but first ye will consult with the king, and he will show you where the danger rests."

The court, to their credit, did not act in accordance with Mr. Attorney's suggestion. Timid they undoubtedly were, as the sequel will show, but neither so servile nor corrupt as certain historians have since represented them. Had they then held their patents, as now,

*quamdiu se bene gesserint*, we are inclined to think there would be little fault to find with their decisions, and till we are ourselves perfectly indifferent to considerations of place and income, we ought to have a little charity for their moral cowardice. They fixed a day for judgment, and there seems to have been little doubt what their decision would be. The king at any rate felt uneasy, and resorted to the expedient of transferring the prisoners to the Tower, sending an explanatory letter to the judges. In this he told them that he purposed that none of the accused should come before them "until we have cause given us to believe they will "make a better demonstration of their modesty and "civility, both toward us and your lordships, than at their "last appearance they did." Beneath this velvet sheathing the trembling justices felt the impending sword, and, on the appointed day, no prisoners of course appearing, they refused to give judgment, alleging that it would be to no purpose to do so, as the prisoners, being absent, could neither be bailed, delivered or remanded. Accordingly the nine members remained in durance throughout the long vacation.

Toward Michaelmas the king sent for the chief justice, who attended by one of his *puisne* justices, the distinguished Whitlock, waited upon him, and in reply to his pressing questions informed him that the judgment of the court would be to bail the prisoners, subject to their giving security for their good behaviour. Although not too well pleased, Charles put on a smiling face, telling them that "he would never be offended with his judges, "so they dealt plainly with him, and did not answer him "by oracles and riddles."

On the first day of term, Mason, of counsel for the members, moved for judgment, and was informed of the decision of the court. The prisoners however were now in the mind of St. Paul at Philippi, and by no means willing to secure their liberty by compromise. Mr. Selden, speaking for all, demanded to be bailed in point of right, "if it be not grantable of right we do not demand it," said he. Serg't Ashley offered his own bail for his son-in-law, Hollis, but Hollis refused to join in the bond, and Long, whose sureties for good behaviour were actually in attendance, discharged them and cast in his lot with his brethren. Thus they all cheerfully returned to prison, esteeming loss of liberty a lighter thing than voluntary surrender of their rights. The victory was theirs, and although some died in prison, none were conquered. Doubtless they looked for speedy deliverance from Parliament, but for ten years no Parliament was summoned. Their captivity became gradually relaxed, and at length merely formal, and when at length the king was compelled to call his commons together, and the famous Long Parliament met, their turn came. That Parliament forgot no old scores, and in the midst of all its pressing labours found time to recompense the sufferers of 1629. Each survivor received £5,000, and to the deceased Sir Miles Hobart a monument was erected. The noble freedom which our race on both sides of the Atlantic enjoys to-day remains the common monument of all its builders, amongst whom are numbered our nine members.

# THE KING'S TRIAL.

The Commons having resolved that "the people are, "under God, the original of all just powers," and deducing therefrom the inference that themselves, as the people's representatives, were supreme in the nation, and that their enactments had the force of law without consent of king or peers, proceeded to apply their authority in the punishment of those guilty of the long troubles which had culminated in the civil war. The head and front of the offenders was the king himself, and with him they began.

On January 4, 1649, an ordinance was passed erecting a High Court of Justice for his trial. Whether this precedent was in the minds of the framers of the Judicature Acts of our own time we cannot say, but designedly or not, the old title has been revived, and the High Court of Justice is to-day the style of the English court of first instance.

Many names are to be found on the list of the 135 commissioners, who were constituted the king's judges, which have still a place in history. The roll commences with Oliver Cromwell, first in place as well as fame.

Next comes the sturdy Ireton, whilst Waller, Skippon, Pride and Ludlow, remind us of the recent battles from which they came, hot with victory, to sit in judgment on their adversary. Amongst the men of the long robe we find Bradshaw, Thorp and Nicholas, all serjeants at law, and two names are there, which to our ears have oddly incongruous associations, to wit, Richard Ingoldsby and R. Tichborne. Not all the commissioners participated in the proceedings of the court, Fairfax and Whitlocke being the most notable absentees, but the majority were far from shrinking from responsibility. They knew their duty, and were willing to perform it.

Moreover, they were determined to carry out their task in the most public and solemn manner. Many were the meetings and committees, elaborate were the preparations, but at length all was complete, and on January 20th the court assembled in Westminster Hall. Careful precautions had been taken against tumult and conspiracy. The vaults under the Painted Chamber had been searched to provide against a possible gunpowder plot. Guards were mounted upon the very leads of the roof. All privy means of access to the Hall were blocked up, including the "doors from the house "called *Hell*," and "Mr. Squibb's gallery." The president, Mr. Serjeant Bradshaw, by way of extra safeguard, had provided himself with a thick, high-crowned beaver hat, lined with steel, to ward off blows, and stout barriers were erected between the seats of the court and the space reserved for the public. The Hall was hung with scarlet, and before the president lay the mace and sword of state.

The judges being in place, the king was brought in, amongst a confused murmur from the populace, which showed the divided state of public feeling. Looking around with a stern countenance, and not deigning to remove his hat, he listened indifferently to the reading of the ordinance, and the call over of the commissioners' names. At the mention of Lord Fairfax, however, a woman's voice from the gallery cried out "he had more "wit than to be here," a remark not forgotten doubtless by some of the commissioners, when after the restoration they found themselves arraigned as regicides.

For the commonwealth Cook rose to open the charge. The king, laying his cane on the counsel's shoulder, bid him hold, but at the order of the president he proceeded, simply making the formal complaint which had been previously settled by the commissioners themselves. After reciting that the king had, contrary to his limited power to govern for the good and benefit of the people, and with a design to erect a tyrannical power, levied war against the parliament, the principal battles of the struggle were specified. The prisoner was charged with having acted "against the public interest, common "right, liberty, justice and peace of the people of this "nation, by and for whom he was intrusted with power." Finally he was impeached as "a tyrant, traitor, murd- "erer, and public and implacable enemy to the common- "wealth of England," at which words he laughed.

The president now called upon him for his answer, upon which he demanded by what lawful authority the court sat. Being referred to the authority of the people of England, by whom he was elected king, he promptly

denied the certainly novel proposition of his elected sovereignty, and after some short passages of words the court adjourned till Monday, Bradshaw telling him that he would then be required to give his final answer.

At the opening of the court on Monday, Cook moved that in default of a positive answer the charge might be taken *pro confesso*. The president, without dealing with the motion directly, called upon the king for his answer to the charge, telling him "we do expect you "should either confess or deny it; if you deny it, it is "offered in behalf of the kingdom to be made good "against you; our authority we do avow *to the whole* "*world*, that the whole kingdom are to rest satisfied in, "and you are to rest satisfied with it. And therefore "you are to lose no more time, but to give a positive "answer thereto." The king however stood to his objection, and proceeded to give reasons, in which he was interrupted by the president, who told him that no court would submit to have its authority disputed, to which the king replied that though he was no lawyer professed, yet he knew as much law as any gentleman in England (a saying which popular tradition has changed into the expression "that he knew as much "law as any gentleman should know"), and that, by any law that he had ever heard of, delinquents might put in demurrers against any proceedings as illegal, "and I demand to be heard with my reasons; if you "deny that you deny reason."

President—"Sir, it is not for prisoners to require."

King—"Prisoners! Sir, I am not an ordinary pri-"soner."

President — "The court hath considered of their "jurisdiction, and they have already affirmed their "jurisdiction. If you will not answer we shall give "order to record your default."

King—"You never heard my reasons yet."

President—"Your reasons are not to be heard against "the highest jurisdiction."

King — "Show me that jurisdiction where reason is not to be heard."

After a little more discussion of this sort, Bradshaw, finding himself getting considerably the worst of the encounter, cut the matter short by ordering the sergeant-at-arms to take away the prisoner, and the court adjourned.

Next day Cook renewed his motion. The same old ground was fought over, but the king was not to be entrapped, and the court at length ordered default to be recorded against him, much doubtless to Cook's disappointment, who having prepared a long-winded speech in anticipation of a plea of "not guilty," now found his chance of oratorical display gone. In this predicament he resorted to an expedient which has in later times been adopted by various congressmen, and caused his great undelivered oration to be printed, thus preserving to posterity the most extraordinary specimen of bombast and bathos it has ever been our ill fortune to peruse. In the midst of an opening passage of tremendous sound and fury occurs an execrable pun—"Anglia hath been

" made an Akeldama, and *her younger sister*, *Ireland, a* " *land of ire* and misery." * * * " Yet what heart but " would cleave if it were a rock, melt if it were ice, break " if it were a flint, or dissolve if it were a diamond, to " consider, etc." Truly, here is a notable selection from " the alms-basket of words," made by a puritan Holofornes.

No further proceedings occurred in open court till the following Saturday, but sitting in the Painted Chamber, the commissioners took the depositions of several witnesses, " *ex abundanti* only," as they expressed it. These were mostly soldiers, present at the various engagements of the war, and simply proved the sufficiently notorious fact that the king had borne arms in the recent struggle. At length they resolved on the death sentence, and having settled the form thereof adjourned into open court.

On Saturday, accordingly, January 27th, the last session of the court was held. As the king was brought into the Hall a cry was raised of " Execution ! Justice! " Execution!" Silence being restored, the king desired that before sentence were passed he might be heard in the Painted Chamber before lords and commons, having something to say which concerned both. This was denied, the president, in the course of his refusal stating that the charge against the prisoner was made by the people of England. The same voice which had been heard on the first day exclaimed " no, nor the hun- " dredth part of them." This time the offender was detected, and proved to be no other than Lady Fairfax, who was summarily ejected.

After some further discussion, aud a short adjournment, Bradshaw proceeded to pass sentence. He made a lengthy speech, telling the king that "as the law is "your superior, so, truly sir, there is something that is "superior to the law, and that is the parent or author "of the law, and that is, the people of England." He quoted Bracton, "*rex habet superiorem, deum et legem, "etiam et curiam; debent ei ponere frœnum*—they ought "to bridle him." And cited again from the same author "that parliaments were they that were to adjudge the "plaints and wrongs done of the king and the queen." From this he passed to the long intermission of parliaments under the king, "and truly, sir, in that you did "strike at all; that had been a sure way to have "brought about your intention to subvert the funda-"mental laws of the land, for the great bulwark of the "liberties of the people is the parliament, and to subvert "and root up that, which your aim hath been to do, "certainly at one blow you had confounded the liberties "and property of England." Had he stopped here his argument would have been forcible, and befitting the occasion, but lawyer like, he must needs seek for precedents, even upon so unprecedented an occasion, and accordingly he adduced the depositions of Edward II, Richard II, and the king's own grandmother, Mary Queen of Scots, and by these ill examples sought to fortify a position which found its true and only justification in the broad principle of public right, with which he had commenced. After referring to the recent war he closed in high puritan strain, reminding the king that his sins were of so large dimension that if he did but seriously think of them they would drive him to a

sad consideration, and might improve in him a serious repentance. He then ordered the sentence to be read.

This was a full recital of the proceedings, fairly engrossed on parchment, and closing with the stern operative part, " for all which treasons and crimes this " court doth adjudge that the said Charles Stuart as " tyrant, traitor, murderer and public enemy, shall be " put to death by the severing his head from his body." The reading being finished, the whole court rose whilst Bradshaw declared it to be their unanimous judgment.

The king now demanded to be heard, but was peremptorily refused, and forcibly removed from the court, exclaiming " I may speak after the sentence. By " your favor, sir, I may speak after the sentence, ever. " By your favor! Hold the sentence, sir! I say, sir, I " do—I am not suffered to speak—expect what justice " other people will have ! "

Short respite was given between sentence and execution. On the following Tuesday, a cold, dull day, the king stepped through a window of the Banqueting House on to the scaffold, which was surrounded by such a force of soldiers that his voice could not be heard by the people. Addressing himself therefore to the bystanding officials, he made a short and dignified speech, closing with the declaration that he died a Christian according to the profession of the Church of England. He told the executioner not to strike till he should give a sign by stretching out his hands. Taking off his George, he handed it to Bishop Juxon with the one word, " *Remember.*" Then, settling his neck on the

block, he passed a few moments in silent prayer, and stretching out his hands gave the signal, at which the axe fell with one effective blow, and the tragedy was over. Certainly, nothing in Charles's life became him so well as his manner of leaving it.

For moral upon the whole matter we close with the famous reply of the old Scotch laird to that zealous Tory, Doctor Johnson:

Doctor Johnson — "What did Cromwell do?"

Auchinleck — "*Cromwell do! God, sir! He garr'd kings ken there was a lith in their necks!*"

## *THE TRUE STORY OF OPHELIA, OR THE DEATH OF MISS STOUT.*

Passing over for the present the period of the last two Stuarts, so rich in important and picturesque political trials, we find our attention arrested by a case which at the time excited public feeling throughout England to an unusual degree. Had it occurred in our own days it would have filled the newspapers with sensation, and might even have been deemed worthy of notice in the very throes of an election,

At the elose of the seventeenth century there dwelt in the little town of Hertford a young Quaker gentlewoman named Mistress Sarah Stout. Her means were good ; her father, who had amassed considerable wealth, having made her his sole executrix , and given her the greater part of his personal estate. She lived with her mother, and passed, to all outward appearance, a quiet, happy, retired life But beneath this veil of humdrum monotony a constant struggle was going on between the strict principles of the sect in which she had been brought up, and which she lacked sufficient strength of mind to break away from, and those impulses toward innocent pleasure and freedom, natural to a young, well educated girl. The few letters written by her which

have come down to us are couched in the easy, graeeful style of a refined woman, and we can judge of the repugnance with which she received the tirades of a certain " Theophilus, a watchman," who on one occasion at least preached in her mother's house, and before an audience of some twenty or thirty people pointedly addressed himself to her backslidings, telling her that " her " mother's falling outwardly in the flesh should be a " warning to her that she should not fall inwardly," From such " canting stuff," as she termed it, she turned with pleasure to the only congenial society that seems to have been open to her, that of the Cowpers, a neighboring county family. Sir William Cowper and his eldest son were members for the borough, which was far from being a pocket one, aud the steady support they had received in their election struggles from Miss Stout's father had been the origin of a friendship long since ripened into intimacy. When in London, whither business connected with her investments sometimes called her, she was a welcome guest at the house of William Cowper, jr., and his younger brother Spencer Cowper, both barristers in good and increasing practice. The elder brother in fact was a king's counsel, leader of the circuit, and afterward, as lord chancellor, played a great and honorable part in the public affairs of the nation. (*Vide* his life in Campbell's well-known Lives of the Chancellors.) The younger brother was frequently pressed by Miss Stout to stay at her mother's house when the assizes brought him to Hertford, but he preferred sharing the lodgings of his brother.

On one occasion however, that of the spring Assizes, 1699, the elder Cowper was detained in town, and

Spencer, with the natural desire of a young barrister to save himself needless expense, accepted her invitation. Arrived at Hertford he found that his usual lodgings had been kept for him, so that there was nothing to be done but to take them. He dined with the Stouts, explained to them the unavoidable disappointment, and returned to their house in the evening for the purpose of paying the young lady some interest upon an investment he had made for her. As the evening passed on, the mother left the room. About eleven Miss Stout ordered her maid to warm Mr. Cowper's bed, to which he made no objection, and the servant accordingly went upstairs. In a quarter of an hour's time she heard the front door slam, and after an uncertain interval spent in dawdling after the manner of maidservants, she came down to find the parlor empty. Neither Miss Stout nor Mr. Cowper returned, but the mother seems to have felt no great uneasiness, and like a thundershock came the news in the morning that her daughter's body had been found floating in the mill-pond.

On the same day a hurried inquest was held, and an open verdict returned. Cowper, without again visiting the mother's house, left the town with the rest of the bar, and at first the whole matter seemed likely to blow over. But as we all know, tongues in a country town will wag, and it was not long before scandalous stories got afloat affecting the poor girl's reputation. Mrs. Stout too had her dormant suspicions roused, when on examination of her husband's affairs, she found the estate deficient by £1,000 of the figure at which she had estimated it. The Quakers loudly protested that it was an impossibility that one possessed of " the inner

" light," although a backslider, should commit suicide, and the conjoint influence of all these causes led to an exhumation of the body on April 28th, at which six medical men were present. Five of these unhesitatingly agreed that the deceased was not drowned, but was dead before being thrown into the water, and as the dissentient happened to be Sir William Cowper's family surgeon, his refusal to join in his colleagues' opinion only increased the burden of suspicion. At this point another circumstance came to light. It appeared that on the very night of Miss Stout's death three strangers took lodgings in the town, and were overheard talking of the young lady, one of them saying that she had thrown him over, but a friend of his would be even with her by this time. These men were seen in Cowper's company next day, and it further came out that they had spent the whole of the previous afternoon in the town, although they only went to their lodgings a little before midnight, and one of them was then heated by exertion and covered with dirt. These mysterious visitors were traced, and turned out to be Marson and Stephens, two London attorneys, and one Rogers, a scrivener.

And now the whole town was aflame with an excitement which rapidly spread throughout the kingdom, and to which the political passions, so violent at that epoch, added fuel. The Cowper family stood in the front rank of Whiggism, and were consequently, in the opinions of their Tory and Jacobite opponents, capable of any crime. An unfortunate *liaison* in which William Cowper was involved extended its prejudicial effect to his brother, and, we may remark in passing,

subsequently gave Voltaire occasion to assert in his "Philosophical Dictionary" that the chancellor of England both practised and defended polygamy! From every side arose an outcry for inquiry, and Spencer Cowper, Marson, Stephens and Rogers were arrested, examined before Holt, C. J., and committed for trial. Finally on July 16th they were duly arraigned for murder at the Hertford assizes before Baron Hatsell.

Jones for the prosecution opened his case more strongly than his subsequent proofs warranted. The unexplained movements of Cowper, the position of the body when found, the unhesitating statements of the medical witnesses, and the strange actions of the three lesser prisoners however made a heavy case of suspicion, and it is evident that at the commencement of the case the judge was prejudiced against the defence.

An initial point of some interest was raised. The prosecution having challenged certain jurors, Cowper called upon them to show legal cause for their challenges. Jones contended that he had the same right of peremptory challenge as the prisoners, but Cowper quoted Hale's Pleas of the Crown, page 259, and a statute of 33 Edward I, where it is expressly enacted that the king shall not challenge without cause, and the judge held with him that the prosecution had no right of peremptory challenge. Cowper however waived the point, and the jury being sworn, the first witness called was the deceased's maidservant, Sarah Walker. The material part of her evidence has already been given. In cross-examination Cowper elicited the fact that she had on two previous occasions bought poison for her

misstress, but she cleared this up by showing that it had been used to poison an unruly dog.

Next came the witnesses as to the finding of the body. Of these there were no less than ten who all agreed that the corpse was floating in water some five feet deep, portions of the dress being above the surface, and the whole body being only just submerged. The head and right arm were entangled in the stakes of the mill-dam, and there were various bruises around the neck, but only such as might easily have been produced by friction against the wood. No water was in the body, and only a little froth oozed from the nostrils.

After some minor and irrelevant testimony, five of the doctors who had assisted at the exhumation were called. The body had been found in a remarkable state of preservation, and all agreed with great positiveness that deceased could not have been drowned, basing their opinion on the ground that if she had come by her death in that manner her inner parts would have at least some water in them, and would consequently have putrefied. The opinion of Doctor Woodhouse may be taken as summarizing their united views: "My opinion is that no person is drowned by water but he must have a great deal of water within him, a great deal of water in the stomach, and some in the lungs." – Hatsell B.— "Pray let me ask you a question; some of the witnesses "said that if a person be drowned, and lies dead a "great while, the inwards will be putrified — what is your opinion of it?" Doctor Woodhouse—"No doubt, "my lord!"

As to the point of the floating of the body, which the prosecution alleged was a sure sign of death before immersion, the doctors were not so positive, but they agreed that they had never met with a case of the body of a drowned person floating so soon after death. Upon this the judge remarked that Doctor Browne "has a "learned discourse in his 'Vulgar Errors' upon this "subject, concerning the floating of dead bodies. I do "not understand it myself, but he hath a whole chapter "about it."

Pat upon the quotation of Vulgar Errors, Edward Clement, an old sailor, stepped into the box and varied the proceedings by a narration of his experiences in the battle off Beachy Head when he saw several thrown overboard during the engagement, particularly one that was his friend and killed by his side, the whole result being that all that were so killed and thrown overboard floated. He also instanced the well known practice of tying shot to the feet of those who are buried at sea. For the reverse fact, he quoted the shipwreck of the Coronation, and at the risk of a little irrelevancy we will let the old salt tell his own tale. "Have you seen "a shipwreck? A. Yes, the Coronation in 1691. I was "then belonging to the Duchess, under the command "of Captain Clement. We looked out and see them "taking down their masts; we saw the men walking up "and down on the right side and the ship sink down "and they swam up and down like a shoal of fish one "after another; and I see them hover one upon another "and see them drop away by scores at a time; and "there was an account of about nineteen that saved "themselves, some by boats and others by swimming;

" but there was no more saved out of the ship's " complement which was between five hundred and six " hundred, and the rest I saw sinking downright, some " twenty at a time." Clement was succeeded by another tar, one Richard Gin (most appropriate name for a grog-loving mariner), and ultimately the prosecution proceeded to the case against the other three prisoners, the substance of which has already been stated. Here the prosecution rested.

Cowper opened his defence at some length, first pointing out that the whole case amounted merely to suspicion, then dealing with the medical evidence, giving a full account of his own actions on the night in question, and attributing the prosecution to the combined malice of the Quakers and of his family's political opponents. He referred to certain letters of the deceased, which he should produce and which would afford a key to the whole mystery, protesting however that if he stood there singly in the case of his own life he would not do so, but the consideration of the three innocent men arraigned with him compelled him to adopt this course. Closing in a somewhat rhetorical strain, he was told by the judge " not to flourish too much."

The first batch of his witnesses were the constable and other parish officials present at the taking of the body out of the water, but their testimony substantially agreed with that already given for the crown.

Next came the doctors for the defence, nine London physicians and the distinguished anatomist William Cowper, who, though bearing the same name, was no

relation to the prisoner. This gentleman gave a full exposition of the whole process of drowning, pointing out the important distinction between those voluntarily and involuntarily drowned. The latter class, in their struggle for life, will invariably swallow a considerable amount of water, but the suicide, keeping his breath for a speedy suffocation, may, with sufficient resolution, attein his end without swallowing any water whatever. As to the sinking of bodies, he detailed various experiments he had made with dogs, with a view to the trial, resulting in the conclusion that dead bodies necessarily sink if there be no distention to bring them up, but that distention may happen either before or after death, so that no inference can be drawn from the fact of a body floating or sinking. The reason of fastening weights to those deceased at sea he explained to be not so much to sink them, as to prevent their rising afterward. Another witness, Dr. Crell, being interrupted by the judge whilst referring to some ancient authors, retorted that he saw no reason why he should not quote the fathers of his profession in the case "as well as you "gentlemen of the long robe quote Coke or Littleton "in others;" a remark which shows that even so late as the close of the seventeenth century the medical profession looked rather to books than experiment for their knowledge, and had the same odd custom of valuing authorities by age, which still prevails amongst "the gentlemen of the long robe."

The defence then called witnesses to prove deceased's melancholy state of mind, and in this they had great success, more than one person proving that she had expressed an intention of drowning herself and had

confessed that she was in love with one she could not marry. This point Cowper clenched home, producing the promised letters, in which her unfortunate passion for himself was only too clearly expressed, her last letter, written four days before her death, containing the words " I won't fly for it, come life, come death, I am " resolved never to desert you." As to this also the future chancellor gave evidence showing that his brother had used all reasonable means to disenchant Miss Stout of her unrequited affection.

The mystery was now sufficiently solved. Cowper's movements after leaving the house were fully accounted for. His financial relations with the deceased had not been referred to by the prosecution, but for the more complete clearing of his name he showed that his only dealing of this kind had been to find a mortgage security for a small sum, the interest of which he had paid her on the eventful evening. The case against the other three prisoners, consisting in merely loose expressions grossly exaggerated by ignorant and malevolent witnesses, was dissipated, it being clearly proved that they were in town on assize business, and the very frankness of their conversation with respect to Miss Stout, whom one of them had previously unsuccessfully courted, was inconsistent with their guilt. The exhumation, which had placed the lives of the prisoners in such jeopardy, had had the one good result of establishing the poor girl's chastity, and when the case for the defense was closed there could be no doubt what the verdict would be. The judge, a weak, fatuous man, summed up shortly and generally, excusing himself from going into the details of the evidence on the score

of faintness, and, after half an hour's consideration, the jury returned a verdict of " not guilty."

Thus ended a case which we have very imperfectly summarized. Some subsequent proceedings were taken in chancery, the heir suing out a writ of appeal (a procedure abolished by a statute of George IV), but they came to nothing and the war of pamphlets, in which the heated contestants on either side cooled off their feelings, gradually ceased. Among these transient *feuilletons*, one entitled " Reply to the Hertford Letter " is worth noting as containing a full and apparently sound examination of the whole subject of drowning. It may be found in Howell's State Trials (ed. 1816) vol. 13, p. 1218, and there, too, the reader curious for more details may consult *in extenso* the whole proceedings upon the trial, occupying more than 140 closely printed columns. He may also, if he pleases, find in the once famous novel, the " New Atlantis," written by Swift's friend, Mrs. Manley, a malicious presentation of the worst hypothesis of the whole affair, Cowper being " Moses " and Miss Stout " Zara."

Spencer Cowper subsequently made a distinguished mark in life, becoming a judge of the Court of Common Pleas. We are told, and may well believe, that he was ever cautious and merciful in trials for murder, nor was the character of " Ophelia," to him, a mere creature of the poet's imagination.

# *THE TRIAL OF LORDS WARWICK AND MOHUN FOR THE MURDER OF CAPTAIN COOTE.*

Famous cases usually derive their celebrity either from the importance of the issue or the intricacy and mystery of the facts, but there is a third class in which the interest arises from the sudden and powerful side-light they throw upon life and manners in by-gone times. Of such is the trial which we have now to sketch. Thackeray, with the instinct of a great master, has not failed to avail himself of its strong colours in "Esmond," to our thinking the most perfeet of his works, and no part of that exquisite tale is more striking than the chapter in which he describes the duel between Castlewood and Mohun. Although taking the principal incidents from our present trial, he has used the novelist's license to mix them with circumstances drawn from the subsequent encounter between Mohun and the Duke of Hamilton ; a license which is, of course, not open to us in our more humble capacity of chroniclers of facts.

In the spring of 1699 the House of Lords assembled in solemn conclave to try two members of their august body, the Earl of Warwick and Lord Mohun, for the murder of Captain Coote. Mohun was the most notorious "hard case" of an age prolific in rakish scoundrels.

Once before he had appeared at the same bar on a similar charge. Whilst attempting with a worthy associate to abduct the famous actress, Mrs. Bracegirdle, her protector, Captain Mountford, had been run through the body, but as Mohun had not actually dealt the fatal blow, his peers, by a vote of sixty-nine to fourteen, acquitted him of the crime, and he was restored to a society of which he was the pest.

Warwick had not attained an equal distinction of infamy in public estimation, but there was, if our reading of the facts be correct, little to choose between them. Both were emphatically "men about town," and passed the greater part of their waking hours at the card table, in the bagnio, or running amuck through the streets of London with the notorious and dreaded Mohocks. Amongst their chosen associates was one Coote, an admirable specimen of the "led captain," familiar to the reader of the novels of that day; a *genus* represented amongst ourselves by the toady and tufthunter. Coote was Lord Warwick's particular parasite, and as we have said, it was for his death that these two worthy noblemen found themselves arraigned. On March 28, 1699, the lords filed in stately procession into Westminster Hall, duly attended by clerks, masters in chancery, sergeant-at-arms, ushers and the common law judges; the lord chancellor, Somers, Macaulay's great favourite (who was also lord high steward for the *nonce*), following in solitary dignity in the rear. All standing uncovered, the royal commission was read, and after a long perusal of official records in barbarous Latin, the Earl of Warwick was brought to the bar. The lord high steward shortly addressed him, informing him that he stood

indicted by the grand jury of Middlesex, and that whilst he could not, as the law then stood, have the assistance of counsel upon matters of fact, no evidence would be received against him but such as was warranted by law, no weight would be laid upon the evidence but such as was agreeable to justice, and that he might assuredly promise himself throughout the whole trial to find all the candour and compassion consistent with impartiality. "Beyond that nothing is to be expected; their lordships can never so far forget themselves as to depart from what is right, and to draw the guilt of blood upon their own heads; but if your lordship is innocent, you are safe." The indictment was then read in English, and the prisoner pleaded not guilty, electing to be tried in the usual form—"by God and by his peers."

For the Crown, Serjeant Wright opened the pleadings, and the attorney-general (Sir T. Trevor) stated the evidence briefly and clearly. The first witness was Samuel Cawthorne, the "drawer," or in modern parlance, bar-tender, of the Greyhound Tavern in the Strand. He proved that on the night of Saturday, October 29, 1698, Warwick and Mohun were in company at the tavern with four officers, Captains Coote, French, Dockwra and James. Coming down stairs about midnight they called for sedan-chairs to go home. Witness went to fetch chairmen, and on his return to the house heard swords clashing. Entering the bar-room, he found the revellers divided into equal parties on each side of the bar, Warwick, Mohun and Coote forming one faction, and the other three opposing them. He heard Coote say, with a vigorous expletive, that "he would laugh when he pleased, and frown when he

pleased," but on witness's entry the swords were put up. Coote, violently excited, was hot for fighting, but Warwick and Mohun threatened to send for a file of musketeers. They ultimately persuaded him to get into a chair, and each of them also taking chairs, the three started off together. The other three quickly followed, Dockwra exclaiming "they did not care a farthing for them at any time." Cawthorne gave his evidence in a most confused and contradictory manner. and got roughly handled on all sides, especially by the lord high steward.

The next proof was that of the chairmen, the first being Browne, who carried Coote. He deposed that Coote gave orders to be taken to Leicester Square. Warwick and Mohun protested, and begged him to go home with them, and "leave it alone till the morning," but he would not hear them. On their way, Mohun stopped the chairs, and again resumed his endeavours to pacify Coote, but whilst they were talking, the chairs of the other three passed by, and Coote instantly ordered his bearers to take up and hurry to the square, threatening to run them through if they went no faster. Arrived at the square Mohun paid the fares, and the three comrades entered the enclosure. Honest Browne filled and lighted his pipe, and was just ready to wend his peaceable way homeward when he heard a cry for chairs. With much ado getting his cumbrous vehicle over the railings, and making for the spot whence the cry proceeded (it being a very dark night and impossible to see) he found two men holding up Coote in their arms, and crying out "My dear Coote! My dear Coote!" Coote was covered with blood. They end-

eavoured to put him in the chair, promising Browne £100 to make amends for his ruined sedan, but Coote would not be put in, and in the course of their struggles the chair was broken. Then the watch was called, who strictly following Dogberry's time-hallowed advice, "would not come near, for they said it was out of their "watch;" "so" continued Browne, "I staid about half an hour with my chair broken, and afterward I was laid hold upon, both I and my partner, and we were kept till next night eleven o'clock, and that is all the satisfaction I have had for my chair and everything." Of one thing Browne was very certain, viz.: that Warwick was not one of those holding Coote up. Amongst the other chairmen, we need only notice the evidence of Applegate, who, after carrying Mohun to the square, heard the second call for chairs, and took up Captain French, desperately wounded. Him they carried to the bagnio in Long Acre, Warwick following in another chair. When they got to the bagnio, French was so weak with loss of blood that he fell to the ground.

Next came Pomfret, the servant at the bagnio, who let Warwick and French in. He deposed that Warwick's sword, which he still held in his hand, was covered with blood, whilst French's sword was clean. The surgeon was called up to dress French's wounds, and Warwick gave strict orders that none should be admitted to the house, and that he should be denied all inquirers, but in about half an hour, James and Dockwra arriving, Warwick himself let them in. As to the sword, it appeared pretty clear that Warwick's was the only one bloody, and also that it was the only broad sword, though it must not be forgotten that nothing was seen

of Mohun after the affray, nor was his sword ever accounted for.

The surgeon who examined Coote's body after death deposed to finding two wounds, one on the breast about one-half inch wide and five inches deep, and the other under the ribs, made from behind, and about one inch wide and six inches deep, but though much pressed, he would not say that the difference in breadth denoted that the latter wound had been made by a broad sword.

Some minor evidence closed the case for the crown, and Warwick opened his defence. He alleged the fatal quarrel to have arisen from an unprovoked insult given by Coote to French, and charged the death on the latter. He referred to the trial of French, James and Dockwra at the old Bailey, when they were convicted of manslaughter only, and dwelt with somewhat suspicious emphasis upon his long friendship with the deceased, and the many favours he had conferred upon him, amongst others lending him a hundred guineas towards buying an ensign's place in the guards. His evidence consisted merely of witnesses to prove this intimacy, such as that he used constantly to pay Coote's reckoning, and once settled the tailor's bill when that irate tradesman had arrested the gallant captain. From such an expensive intimacy he might be well content to be delivered, but it does not seem to have occured to the prisoner that the evidence could be looked at from this point of view.

When however Warwick proposed to called Captain

French, a battle royal arose amongst the lawyers. The objection of the crown was that a man convicted of felony, and not pardoned, was incompetent to testify, and that his having the benefit of clergy did not remove this disability. The point was most elaborately and learnedly argued by Sir Thomas Powys for the prisoner, and by the attorney-general for the crown, and the peers calling for the advice of the judges the lord chief justice, Treby, delivered a long opinion, going into the whole subject of benefit of clergy, and concluding against the competency of the witness. Another point then arose, Warwick submitting that he being on Coote's side in the affray could not be held guilty in an equal degree with those who where his opponents, but this was too flimsy, aud soon fell through.

Ultimately the prisoner submitted his whole defence without further comment, and the solicitor-general (Sir John Hawley) rose to reply. His voice was too weak to be heard by the more distant peers, and there were calls for some one else to sum up, especially for Mr. Cowper (whose acquaintance we made in our last sketch), Mr. Solicitor however did not suffer himself to be sat upon, and acquitted himself of his task very sufficiently. After succinctly reviewing the evidence he referred to the nature of the wounds and the state of the prisoner's sword, and threw cold water upon the David and Jonathan business, observing that the prisoner appeared much more concerned for Captain French, who, as he now alleged, had killed his friend, than for that friend, whom he had abandoned, dying, on the field. Upon the law, he insisted that, no satisfactory evidence having been given by whose hand the fatal

blow had been struck, Warwick, being present and participating in the fighting, must incur an equal share of the guilt of murder.

At the close of the Solicitor-General's speech the lords retired to their house. After two hours' deliberation they returned to the hall and gave their verdict, each peer rising in order of precedence, from the *puisne* baron upwards, and uncovered, with his right hand upon his breast, pronouncing his judgment thus: "Not guilty of murder, but guilty of manslaughter, upon my honour." The lord high steward then demanded of the prisoner what he had to say why judgment of death should not be pronounced against him according to law, upon which Warwick claimed the benefit of his peerage, according to the statute of Edward VI. This was allowed him, and with a gentle reprimand from the lord high steward, who reminded him that he could not have the benefit of peerage twice, Warwick was discharged, and the house adjourned.

Next day Mohun was put upon his trial, but the proceedings being a mere recapitulation of the case against Warwick need no detailed mention. We only notice that the very fact of his disappearance immediately after the duel, so suspicious in itself, turned out in his favor, for there being no evidence to prove that he entered the square and shared in the fight, he escaped any condemnation whatever, being unanimously found not guilty either of murder or manslaughter. Thus the greatest scoundrel unhung in England escaped scot-free.

Upon his acquittal he made a short speech, promising the lords that he would make it the business of the future part of his life to avoid all things that might bring him into such a position again. He kept this promise which such fidelity that a few years after he forced the Duke of Hamilton, a comparatively respectable man, into a duel, and falling mortally wounded, retained sufficient malice in the moment of death to shorten his sword, and drive it through his noble opponent's heart. Thus the devil got his own after all.*

Upon the principal case; whilst the verdict of the lords was only what might be excepted from a miscellaneous body of men in those times, and such as would to-day be rendered in similar circumstances by a Kentucky jury, our own hypothesis of Coote's death is that he was stabbed from behind either by Warwick or Mohun, both glad of a convenient opportunity to rid themselves of an expensive and turbulent hanger-on. For further information upon the whole matter our readers may consult Swift's letters to Stella, Burnet, Hamilton, the State trials, in short every contemporary work of history or memoirs.

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*NOTE—It is fair to state that there is another account of Hamilton's death which attributes it to Mohun's second, Macartney, who, seeing his principal killed, came up and stabbed Hamilton as he stood over the dead body. We have given the one which appears to us best authenticated.

# LAW IN QUEBEC.

American lawyers have not far to go to find a contrast, more marked perhaps than any furnished by the trans-Atlantic nations usually visited by tourists, to that vigorous, rushing, ultra-modern species of civilization which is all included and described in the word "American." They have only to take the short journey to Montreal, or better still, to Quebec, and they will instantly be in the midst of a people which, in race, in religion, in customs, in short, in its whole social condition, presents a complete antipodes to the surrounding tribes. In no point, perhaps, is the contrast more strongly marked than in the matter of laws and jurisprudence, nor is the contrast, as Americans often assume, wholly in their favour. It is by no means a case of progress and enlightenment on the one hand, as against conservatism and stupidity on the other. When, for instance, Americans have a code which has borne and successfully answered the test of years; when they have a system of costs, based on business principles, fair to the client and not unjust to the lawyer; when they can truly say that every member of their bar is a well educated man; then, perhaps, they may allow ourselves to triumph over the civilians in the North. In the

meantime they will do well to remember that many good things can come out of Nazareth, even though the Pharisees dwell to the south, in Jerusalem, (or New York).

The Civil Code of the Province of Quebec or Lower Canada, is indeed a work meriting, as a whole, very high praise for clearness, consistency and completeness. Although the principles of the common law have in some respects gained a footing therein, notably in commercial matters, still the spirit of the civil law pervades the mass, and the best Quebec lawyers are (if we may express our personal opinion, without being charged with arrogance) somewhat out of their element when dealing with a point of common law, pure and simple. Trained and grounded in a system which is nothing if not logical and distinct, they find the common law a maze of detail and look in vain for the clear, well written sign-posts to which they are accustomed in their own proper territory. The question of the respective merits of the two rival jurisprudences is sometimes hotly discussed by the partisans of either, but, as the disputants generally know only their own side of the case, and, to tell the truth, are more usually actuated by prejudices of race and habit than by any real desire to deal with the merits of the controversy, these discussions are, as a rule, more amusing than instructive. About the same average amount of injustice is probably perpetrated under the shades of Pothier and Sirey as in the precincts sacred to Coke and Blackstone, and an assiduous cultivation of technicalities will produce very much the same result, whether the litigation be in Montreal or New York.

The praise which we have given to the Civil Code cannot be justly applied to the Code of Procedure, which, owing to the haste with which it was compiled, and a well meant but unsuccessful attempt on the part of its authors to combine the merits of the French and English systems of practice, abounds with inconsistencies and faults. It has been amended time and again by the legislature, and now presents a blotched and disfigured appearance, strongly suggestive of a patient suffering under an aggravated attack of small-pox. As a result of this, the natural tendency of legal proceedings everywhere to run into a tangle is greatly increased in Lower Canada and the time of the judges is taken up to a very unnecessary extent with points of practice and informalities. The evil, however, is slowly remedying itself, and some of the recent amendments to the code are calculated to have a very beneficial effect, notably the one which enables a party to a suit to examine his opponent as a witness. The step from this to the perfect admission of litigants as competent witnesses is not a very broad one, and, let us hope, will soon be taken.

Cases are usually tried, in the first instance, before a judge alone, jury trials being seldom resorted to. The hearing may be either at Enquête and Merits, in which the evidence is given and counsel are heard at the same sitting, according to the English and American way; or else, the evidence is taken first, at Enquête, and the argument is subsequently made upon the written depositions at Merits. The sole plea that can be advanced for the latter plan is its convenience for lawyers, who may bring their witnesses up by instalments and at different

times, thus saving unnecessary attendance at Court and considerable expense in producing evidence; but, on the other hand, it is obviously unreasonable upon a hearing at first instance, to argue a cause before a judge who not only has not seen the witnesses, but has not even read a word of the depositions. The necessary consequence is that the court has to take the record and read up the evidence at its leisure, and hence follows the principal blot upon Quebec's procedure, the inevitable *délibéré*, or "C. A. V." The judges have become so habituated to this dilatory vice that it is a rare thing, even at Enquête and Merits, for a case to be decided immediately upon the close of the trial. An interval of a month between argument and judgment is almost *de rigueur;* the interval not unfrequently extends itself to six months; and sometimes a year, and even more, elapses before judgment is given. Even a police magistrate must have his *délibéré*, and frequently delivers an elaborate judgment upon a question of committing a prisoner for trial.

But if the judges are slow, it must in fairness be admitted that they are thorough. Every document in the record undergoes careful scrutiny, and when, at last, the judgment does come, it usually bears the stamp of conscientious work, and the lawyer seldom has cause to say that his points have been overlooked by the court. In the old French books, whose ponderous covers and yellow pages dignify the Advocate's Library and gladden a bookworm's heart, we find judgments which bear the same relation to modern decisions as the cathedral of Reims does to the last Gothic church built in New York. The whole case on both

sides is examined, discussed, compared and balanced, and the final conclusions seems to grow out of the preceding dissertation by irrefutable logic. These are the models which the French Canadian judges seem always to keep before them for imitation. Isolated by their system of law from the rest of the continent, and deprived consequently af any hope of general renown —for who ever heard of a Quebec decision being cited outside of the province? — they work steadily on, and, as a whole, do their duty as thoroughly and satisfactorily as if their decisions, like those of their American and English compeers, lay open to the criticism and formed precedents for the guidance of the united bar of the great Republic and the British Empire.

Passing over the Court of Appeals, and the criminal law (which is entirely English, but, somehow, has in practice a queer mixed flavour), let us close with a word about the bar. As a body, the Quebec bar are better lawyers than advocates, according to the American notions of advocacy. As we have said, jury trials are comparatively rare, and so the tricks of the forum—readiness in reply, plausible speeches, well disguised flattery of the twelve good men and true, count for very much less in the contest for success than thorough preparation and a careful attention to the completeness of the record. Cross-examination as an art has not attained that pitch of refinement which it has reached amongst the common lawyers, for it does not bring so full a recompence of reward. Learning rather than eloquence tells here, and the term jurisconsult is not a misnomer when applied to a good Lower Canadian

lawyer. Finally, a certain old-fashioned professional courtesy still exist amongst the long robed "*confrères*," as they delight to style each other ; a courtesy, however, which, in our opinion, has evil effects in practice. Too many mutual concessions are made, by which delay is encouraged, and clients sometimes suffer.

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## *THE ENGLISH SOLICITOR.*

We have heard the English solicitor described as a "lawyer without law," but, accurately as this description hits the great mass of London solicitors and a large number of the country practitioners, there is still to be found in the "lower branch of the profession" a proportion of sound and stable advisers, well versed not only in the practice but the theory of the law. These men mostly congregate in the country towns and cities of the second class, and have a family practice composed principally of conveyancing, varied with an occasional heavy suit. Removed from easy access to counsel they have formed habits of independent thought and study, and are undoubtedly the most learned, though the least obtrusive section of their guild.

The London solicitor or his brother of the large provincial cities is quite another species. Compelled by dire necessity, as an articled clerk, to "cram" some few law books prior to his "final," he dates his emancipation from the day when he received his certificate, and has since thrown books, like physic, to the dogs. He is purely and wholly a man of business, and pays his counsel for law exactly as he pays his clerks for copying. If ever, by chance, he finds himself cornered and compelled to give a legal opinion offhand, he remembers that good sense is generally good law, and following this rule he seldom errs. But though his legal resources may not be great, his knowledge of the commercial world and its ways is surprising. The promoter and the stockbroker understand the stock exchange, the merchant knows the secrets of trade, the banker feels the pulse of capital, but the solicitor, like Lord Bacon, takes all knowledge for his province, and will give you points on any subject you like, from mines to horse-racing.

Another distinct and fast increasing type of solicitor is the advocate. In London he has little scope, and with a few brilliant exeeptions, the metropolitan advocates are no credit to their confraternity, but in the country there is a large class of business open to him. The local county courts and police courts are the fields where he wins his spurs, and many a man has thus formed the nucleus of a first-rate business. The solicitor who goes in for advocacy must of course keep up a little reading, but as a rule, a perusal of the weekly notes and of the few professional journals answers every purpose. Gradually his name gets known, clients flock to him, and bring not only county court cases but Supreme

Court actions and conveyances. The old stagers, who at first regarded him as an interloper, are compelled to get off their high stilts and accept him as their equal. Next he adds to his practice the emoluments of some local office—a town clerkship, registrarship, or what not. Getting older and staider he hands over the advocacy to his junior or quietly drops it. Long before his death he has become one of the institutions of the town, knowing and known by everybody, and when at last he joins the majority, the corporation will walk behind the hearse, and folk will say, "another landmark gone!" The practice he built up will support the incompetence of his successor for a generation, and the mere stick who forty or fifty years hence will be laid by his father's side will have figured for a lifetime as a lawyer in good practice upon the merits of his father's name. Such are the slow but sure rewards of professional success in a country where the relations of client and attorney often merge into those of lifelong friendship and esteem.

No sketch, however hasty, of the English solicitor would be complete without some notice of his relations with counsel. The three necessary thorns in his life are clients, clerks and counsel, and the greatest of these is counsel. The half yearly fee lists of his standing junior cut huge cantles out of his profits, but these are well earned and cheerfully paid. It is against the big men, the haughty silken Q. C.s, that he sometimes feels bitter. He has been too often left in the lurch by these dignified frauds to join in those magniloquent eulogiums on the purity, the disinterestedness, the devotion to clients, and in short, the general moral

grandeur of the English bar, which are so frequently pronounced by the members thereof. He remembers poor Smith's case, which he feels certain was lost because the leader was absent, and the junior was sulky at his double burden, and he has suffered so often in this way that he knows the old excuse " detained in another court " cannot always be true, but is, like charity, made to cover a multitude of sins. Be it remembered that for all these shortcomings he is the vicarious sufferer; he has to face the wrath and hear the complaints of the justly indignant suitor, and we cannot wonder that his appreciation of the "higher branch of the profession" is somewhat modified by these facts. Our readers may rest assured that it is as true of the English bar as of most other institutions, that "distance lends enchantment to the view."

# A SHORT PLEA FOR A CODE.

Of laws "the most to be desired are those that are the most rare, the most simple and general; and I am further of opinion that we were better to have none at all than to have them in so prodigious number as we have." Thus concluded old Montaigne. It is hardly necessary to observe that were he living to-day he would see no reason for changing his opinion. He knew that "there is little relation between our actions that are in perpetual mutation and fixed and immobile laws," and he expresses with his usual pungent quaintness the futility of the attempt to provide for all contingencies by statute and by precedent. It is like trying to hold quicksilver. It is, in short, unscientific, and this is to our mind the fatal objection to the common law in its present state. We think that the supporters and advocates of a code are, in effect, seeking to adopt in law the same method that prevails in every other branch of human knowledge—to strip away the scaffolding, and show the actual state of the structure.

If, in any of the physical sciences, the workers of the present day had at their command only the accumulated undigested experiments of their predecessors, what progress could they make? It is by method that they advance. Each man's discovery or experiment becomes

part of a distinct and definite whole, so that the trained specialist can state precisely the position up to date of his particular science. Why should law alone be exempted from this process? Because, we are told, law is not a science. Most assuredly amongst ourselves at present it is not, but if it is wished by the assertion to convey that it is intrinsically incapable of being made a science, we have proof positive that the assertion is wrong. Wherever a code exists there law has assumed the rank and dignity of science; there jurists and jurisconsults exist in fact as well as name, and the study of the law is a truly liberal study, Law is the essence of all other sciences, and shall it be unscientific only when applied to human affairs, its most immediate function? Can we not all discern with more or less distinctness the fundamental principles which underlie the endless mutations of our cases? Often misapprehended and misapplied, still the principles are there, just as capable of exact and definite statement as the laws of gravitation or molecular force.

Take one simple instance. *Sic utere tuo ut alienum non lædas* is one of the bottom truths, as old as the hills, which must have been recognizable as a principle of right by the first judge who ever tried a case. And yet where is it in our law? (*) We must go and dig it out of *Fletcher* v. *Rylands* or some similar case, and accompany it with a long train of distinctions and collateral authorities, and thus waste time in getting rid of a heap of super-incumbent material, useful enough perhaps in

(*) NOTE.—It will be remembered that this paper was written for and first published in an American periodical, *The Albany Law Journal*

other connections, but just superfluous rubbish for the purpose we have in hand. We would laugh at the *savant*, who having to call to his aid the law of gravitation, should for that purpose remount to Newton's original experiments, and work his way from them downward to the matter in hand, and yet this is what we are doing every day of our lives. Further, is it not probable that if our scientific men persued this roundabout course they would go wrong in many an observation, simply for want of having the necessary law right to their hands? The length and difficulty of the reference would lead to many an oversight of the law. And so here, if this old maxim, couched in fair, modern terms, formed part of a handy, well conned code, would not its force be invoked in many a case where it is now passed over in inadvertent silence?

Nor let it be objected that what we ask for is simply a new version of the Decalogue. In the best sense it is a modern Decalogue we ask for. "For there are in nature certain fountains of justice whence all civil laws are derived, but as streams, and like as waters do take tinctures and tastes from the soils through which they run, so do civil laws vary according to the regions and governments where they are planted, though they proceed from the same fountains." (Advancement of Learning.) We believe that the constant tendency of modern law is toward union with morality. Hard cases do not make bad law, it is bad law that makes the hard cases. The perfect consonance of law and conscience is no impossibility. The goal is still far off, but how much nearer than fifty years ago! Already in England, equity and common law "have met and kissed

each other," and "Meeson and Welsby" slumber in disused oblivion. Now what hinders that we should put on record the exact present state of our *corpus juris*, so that we may see where we stand ? Will not defects be more quickly remedied when they stare us in the face in black and white, challenging the attention of every reader ?

Nor do we think it reasonable to fear that the mere fact of codification would tend to arrest reform. The day of reverence for authority, as authority, has gone by. We are not at all likely to sit down and worship the idol our own hands have made. The danger, if any, lies in a contrary direction—that of too hasty and ill-considered attempts to remove apparent blemishes.

In one respect the law would gain in authority, viz., in public estimation, and how much such a gain is needed no American requires to be told. Just as much as the reproach of obscurity is removed from our "jurisprudence" (save the mark !) just so much will that jurisprudence gain in moral influence. Who can respect a shifting *umbra* that its very professors cannot define ? The influence of the lawyer to-day is still something like that of the magicians of times gone by. He is a professor of a black art, and his *pleas* and *demurrers*, his *instructions* and *exceptions*, correspond to the *pentagons* and *aspects*, the *houses* and *cadalabadra* of old Paracelsus and his mates, That this anticipation of increased authority is not purely theoretical may be seen by a comparison of the public esteem in which the civil law is held in the countries under its rule, with the total indifference of our own people to the common law

as a distinctive system. It is not that the civil law is better than the common law, but it is presented in a better shape, a shape more comprehensible by the laity. In a word, it is more scientific.

The vulgar error that codification would reduce or appreciably affect the amount of litigation is hardly worth notice. Litigation is the application of law to facts, or, and more frequently, the decision of disputes as to what are facts; our quarrel is upon the law itself. "We give the authority of law to infinite doctors, infinite arrests, and as many interpretations, yet do we find any end of the need of interpreting?" We believe not. Let us then have something definite to interpret. Let us endeavour to make of our profession not a mere empiric trade, carried on almost by rule of thumb, but a science, distinct, clear and consistent. For this a code is the first requisite, and, without it, all must remain in ever-changing confusion, and the term "jurist" or "jurisconsult," as applied to an American or English lawyer, must be a ridiculous misnomer.

## *ON EASEMENTS.*

Mr. Gale and others are supposed to have already treated this branch of the law "fully and exhaustively." How true in every sense of the word the latter epithet is needs not to be explained to the fatigued law student, but we are surprised that it should have been left to so insignificant a lawyer as the present scribe to point out at this late date a very important class of easements, to which the professed writers on the subject have paid no attention, an omission the more singular as the easements to which we refer are especially connected with the legal professsion and are, moreover, peculiarly susceptible of light and interesting treatment. These easements are the lawyer's own easements, the little oasis that brighten his weary journey, and console him in some degree for his task of dusty drudgery amongst labyrinthine procedure and interminable reports. Now, as no pioneer in an unexplored field can be supposed to map out the whole region of his survey beforehand, but, at best, can only point out the road his successors shall follow, we need make no apology for unsystematic treatment, but take at once the first easement that comes to hand.

Let us then examine the subject of costs, regarded as an easement. The whole body of costs does not fall

under this term. Far be it from us to call the hard earned rewards of daily work, an easement. The ordinary costs of suits, consultations, etc., are mere wages, seldom equal to our deserts, never to our wishes. But there are certain items, retainers and special fees for instance, which do partake of the nature of easements, which not only reward but please us. What memory in a lawyer's life is greener than that of his first retainer? Then he felt that he had begun to establish a reputation, to make a name, to stand forth from the common crowd, a successful, solid man. And in what a nice round sum the retainer comes, its size not spoiled by division into miserable little items, but standing bodily forth in pleasant dignity, the earnest of other fees to come, the token of a client's confidence. We suppose, though we speak not from experience, that even retainers pall somewhat on the palate after frequent repetition, and ultimately lose much of their original refreshing flavour, but still they must always remain easements, and easements of the most interesting kind.

Another easement, to the country lawyer at least, is a journey to New York on business—what lawyer has not felt the pleasure of telling some *confrère* that he goes up to town to-morrow on an important case? He will not on any account own to this pleasure. He will grumble about leaving his office—but none the less he knows he is going to have a good time and he takes care to have it. Of course, the further he is from the metropolis and the rarer his visits the greater his content, but we think that even the Albany or New Jersey practitioner does not look upon a trip to town as mere fatigue, but manages to suck a little juice out of the

orange of pleasure on most such occasions, frequent as they may be. And then, sometimes there comes along the big easement, a trip to Europe. We do not envy our Canadian brethren many things, but we confess we do sometimes cast a wistful eye on the distant Privy Council, which so often furnishes them with a convenient and substantial holiday from which they come back gainers in health, in pocket, and in experience. How nice it would be if the stars and stripes floated over London, or, better still, over Paris, and our Supreme Court held its sessions there. But, even as things are, a journey to Europe on business is an easement that most lawyers of the first class enjoy at one time or another, and it shall go hard if they can not manage to work it into the long vacation or in some manner contrive to add a couple of weeks' sight-seeing for themselves to the strict business time required.

The mention of long vacation brings that, too, before us an ancient and well established easement, but one which has suffered many attacks and encroachments in recent days, and is fast becoming as doubtful and unsettled a quantity as the easement of access of light, which the judges and text-writers have conspired together to befog so wonderfully. The time was when long vacation was a distinct, determined relief; now it has become an illusive hope, or, at best, a precarious enjoyment. Still, most of us do manage to get our holidays somehow, and what a refreshing servient tenement the sea-beach or the Adirondacks make! How truly dominant we feel as we breathe the fresh air, smoke the tranquil cigar and think about nothing. Great is the easement of vacation time!

Now, besides the three classes of easements we have mentioned, there are other easements of an accidental kind that turn up now and again, and which every man must remember for himself. Last year we had occasion to cross the border to take the evidence of a gentleman who had suddenly found his natal atmosphere uncongenial to his health. After being rowed in an Indian canoe by genuine redskins for some miles, we met our man and, time pressing, we held our impromptu court then and there, under the shadow of a great tree by the wayside. Reclined beneath the tree lay the commissioner, the stenographer squatted himself on a little pile of stones, the opposing lawyers availed themselves of nature's seat, and in the midst the witness stood, and before a rustic audience, to wit, an ancient farmer, who had left his work in the adjacent field and watched us all with ever-increasing amazement, examination and cross-examination proceeded. The lawyers engaged were neither of them unknown to fame (to avoid all suspicion of arrogance, let us say that our own capacity was that of commissioner), and the legal tilt was about as close and vigorous a one as was ever fought out in a more formal court. As our canoe gently glided homeward in the glorious evening light through the broad glittering river, we all agreed that the day had proved a genuine easement for us. Such sudden flashes of pleasure as this must now and then come in the way of most lawyers, and widely varying in their individual circumstances, can all be grouped together under the heading of "accidental easements."

We think we have now said enough to point the way to our successors. If any gentleman of competent learn-

ing thinks fit to take up our theme and reduce our new species of easements to methodical order, "illustrating" each branch with all the authorities, good, bad, and indifferent, in approved text-book style, he is perfectly welcome to the idea, which we now make public property. If he wishes to acknowledge our prior title of discovery, he may do so by an appropriate, but not too fulsome, dedication. We cheerfully resign to him all the profits he is likely to make from his adventure.

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## *SHAKESPEARE'S LAWYERS.*

Lord Justice Bramwell's recent discussion of the legal aspect of Shylock's bond set us to passing in mental review the various members of the long robe who are indebted to Shakespeare for existence, and for fame far wider and more enduring than that of the most learned chancellors and judges of actual life. The remarkable familiarity and accuracy of Shakespeare's legal allusions has induced some to infer that the great master was himself a lawyer, but there is no need to have recourse to a hypothesis wholly unsupported by evidence and intrinsically improbable. From time whereof the

memory of man runneth not to the contrary, the English stage and the English bar have been close friends. The young Templar is usually a man about town, proud of his acquaintance with the greater and lesser lights of the stage, and not wholly ignorant of the mysteries of the green room. The contrast between the two professions is so great that the lawyer, wearied with the hard matter-of-fact drudgery of his chambers, and the student, painfully plodding through the intricate and undigested mass of the common law, naturally turn with delight to that world of fancy and unreality which lies behind the footlights. Justice Shallow, in his green old age, remembered nothing of the musty folios that had once bewildered his poor noddle, and "wrote himself *armigero* in any bill, warrant, quittance or obligation," but time had only magnified the memory of his purple days when he ran about London, a lusty little Templar, and got his head broken by John of Gaunt. He was then "Sir Dagonet in Arthur's show," a fool's part well fitted to a fool; and yet withal a kindly fool, for whom, we confess, we have always had a lurking partiality. And not to dwell upon the past and repeat the list of briefless barristers who have become more or less successful dramatists, we may see the old friendship still existing to-day. Was not Gilbert a barrister? Who is a better judge of good acting than the present Chief Justice of England? Does not the memory of the last of the Chief Barons, Sir Fitzroy Kelly, remain green in the heart of the actors' guild? And so, doubtless Shakespeare had many legal friends to give him a point and see that his law was technical and correct. Let us now call up the phantoms to whom the great dramatist has given "a local habitation and a name," and amuse

ourselves for a few minutes in watching them pass across our imaginary stage.

Portia, of course, claims the place of honour, but her legal existence was so transitory and unauthorized that we must look rather at the master than the pupil, and as lawyers, take more interest in Dr. Bellario than in his temporary student. Portia furnished the eloquence, the native eloquence of woman, but the point of law, which non-suited Shylock, a point in its absoluteness of technicality worthy to be ranked with "the rule in Shelley's case" or the "*sciutilla juris*," came from the brain of the old professor, and the convenient statute which clenched Shylock's defeat, reduced him to beggary and put his own life in jeopardy in place of Antonio's, must have been ferreted out after "we turned o'er many books together" (see Bellario's letter). We can fancy Portia's messenger arriving at the lawyer's house with the "case for opinion," the old man's long night's work amongst his books, and the complacent smile on his face when his task finished, he muttered to himself, "I fancy we've got the rascal now." Like a thorough lawyer, he was not satisfied with knocking his opponent down, but must needs kill him too. The whole case forcibly illustrates the advantage of having a double team of lawyers, and furnishes a striking and perhaps solitary instance in which the leader did all the work and the junior got all the glory—perhaps the learned lawyer would not have been so self denying if his junior had been a mere male like himself.

Now the scene changes from the Venetian court-room to the Temple Gardens. A party of "great lords and

gentlemen" have adjourned in the midst of a weighty legal discussion from the "Temple hall" to this more convenient retreat. A weighty discussion indeed it is, and one whose issue was fraught with woe for the England of that day. The "great lords" admit their own incompetency. Suffolk, with true aristocratic contempt, declares that he has been a truant to the law and never yet could frame his will to it, and unconsciously laying down the principle upon which much judge-made law has been built, adds that therefore he frames the law unto his will. Warwick, subsequently the "King Maker," admits that if it were a question of hawks or dogs, swords, horses or girls, he might perhaps have some authority as a critic, "but in these nice "sharp quillets of the law, good faith, I am no wiser than "a daw," and so, at last, it comes down to the lawyers' verdict. We may imagine the suspense of Somerset and Plantagenet as Vernon steps up to the rose bush saying, "Now for the truth and plainness of the case, I "pluck this pale and maiden blossom here, giving my "verdict on the white rose side"—and is followed by the other lawyer:—"Unless my study and my books be "false, the argument you (Somerset) held was wrong in "you: In sign whereof I pluck a white rose too." Somerset instantly goes back on the arbitration to which he had just submitted and not only swears at the court, but appeals to another arbritration, that of the sword. The Wars of the Roses follow, and after the people of England have been decimated, the sword confirms the lawyer's decision.

Again the scene changes. A new King is on the throne, and we see the audience chamber at Westmin-

ster, where the manly sons of the wise Henry IV await, with mixed feelings, the approach of their brother, the erratic Henry, now "by the grace of God" Henry V of England. To them enters the venerable Gascoigne, Lord Chief Justice. They discuss their prospects under the new reign and all agree that it promises to be a remarkably cold day for the chief. He spurns the suggestion of making friends at court by speaking Sir John Falstaff fair;

> "Sweet princes, what I did, I did in honour,
> Led by the impartial conduct of my soul;
> And never shall you see that I will beg
> A ragged and forestall'd remission—
> If truth and upright innocency fail me
> I'll to the King my master that is dead,
> And tell him who hath sent me after him."

The King enters and with affected indignation reminds Gascoigne of the time when he rated, rebuked and roughly sent to prison *him*, "the immediate heir of England," "Was this easy?" "May this be washed in lethe and forgotten?" How full and able is the chief justice's reply!" How he vindicates "the majesty and power of law and justice!" With what bold integrity does he conclude and challenge censure!

> "As you are a King, speak in your state
> What I have done that mis became my place,
> My person, or my liege's sovereignty."

In another place Shakespeare shows us the same man displaying the same qualities on a less conspicuous occasion. (Hy. IV, Pt. II, Act II, Sc. I.) The rebuke of Sir John Falstaff is conceived in the very spirit of a

vigorous judge who will stand no nonsence, and is perhaps just a trifle gouty and choleric. "It is not a confi-"dent brow, nor the throng of words that come with "such more than impudent sauciness from you, can thrust "me from a level consideration." It is a pleasure to remember that this bluff chief justice is not a mere creature of the imagination, but a historic personage, and the pleasure becomes greater when we reflect that the English bench has not, on the whole, been unfaithful to the character of fearless honesty, which Gascoigne was one of the first to imprint upon it.

## TWO LEGAL PICTURES.

It is difficult to understand why the two fathers of English literature, Chancer and Spenser, have been condemned to share the faint praise of universal respect with the actual injustice of almost universal neglect. Particularly is this to be wondered at in the case of Chaucer,—one would have thought that the warm humanity which breathes with such cheery vigour from the pages of his writings would have induced every English speaking man with the slightest genuine

taste to take the small pains necessary to master his archaic dialect and to enjoy those hearty creations which still speak to us across the lapse of centuries, which still, like Esau's raiment of old, retain "the smell of the field." With Spenser, indeed, the case is different. Hallam's criticism upon "Lycidas" preeminently applies to all Spenser's poems. They may be taken as "good tests of real feeling for what is peculiarly called "poetry;" and we have good authority for saying that the cultivation of a taste for good poetry is peculiarly beneficial to the lawyer, immersed in "legal "studies and practice, which sharpen indeed, but, like "a grinding stone, narrow whilst they sharpen." Moreover, it is a fact to which not a single exception can be found, that all the great masters of judicial and forensic eloquence both in modern and ancient times, have been men of thorough literary education and taste.

However, not to prolong our preamble, let us turn at once to Chaucer and, see there the first picture extant of a common lawyer, and then to Spenser and note the earliest report of a state trial. If our sketch shall induce any one of our legal readers to take the Faerie Queen on the Canterbury Tales for his vacation companion, it will not have been written in vain.

First then for our lawyer. No pert junior is he, but "a serjeant of law, ware and wise," of such acknowledged position that he is often joined in the commission of assize, as is still the case with the leading counsel on the various English circuits. He is a master, moreover of the intricacies of conveyancing. "His purchasing "might not be suspect." What those intricacies were

can only be vaguely surmised by us moderns. The English conveyancer is accustomed to look back regretfully to the times when statutory forms of short deeds and the Torrens system were unheard of, but what must have been the beauties of a deed in days when the Statute of Uses was not, and the Statute *Quia Emptores* was recent and unsettled law?—Of course, our serjeant was a busy man, "nowhere so busy as he "there was" and yet,—here is a touch that makes us think Chaucer knew something of the inside of a lawyer's office himself,—"*he seemed busier than he was.*"

His case law went back to a period further than our present limit of "time whereof the memory of man run-"neth not to the contrary," for he could quote precedents from the time of the Conqueror, and as for the Statutes, he knew them all by heart!—"Every statute "could he plead by rote."—His fees of course are mentioned with becoming respect for their magnitude—what layman could ever speak of a lawyer without thinking of his fees?—but nothing definite is told us as to their precise amount and we are left in ignorance as to whether he counted them in marks or nobles. His gown is mentioned, but not his wig. That modern innovation was unheard of his time. In one conspicuous respect this old lawyer differed from his successors. He was careless about his dress. "He rode but homely in a "muddled coat." Good lawyers, now-a-days, are rather particular about their personal appearance.

So much for Chaucer's picture of a common lawyer under Edward III. Now let us turn to Spenser. The

fifth book of the Faerie Queen is devoted to the legend of Justice :—

> "Most sacred virtue she of all the rest,
> "Resembling God in his imperial might :
> "Whose sovereign power is herein most expressed,
> "That both to good and bad he dealeth right,
> "And all his works with Justice hath bedight."

In the ninth canto, the trial of Mary Queen of Scots is allegorized and narrated in Spenser's richest manner, and we soon forget the byeplay of personal flattery which tainted Spenser and all the Elizabethan writers, in the splendid descriptions and imagery of the poet. It is, however, impossible to quote any special passages for Spenser is the most unquotable of writers. His pictures are mosaics and each part depends for its effect upon the whole. Let my readers go to the original and judge for themselves.

Whilst I am among the old writers, I think I cannot do better than close this rambling sketch with old Hooker's magnificent apostrophe to law. Familiar as it is, it can never be trite. " Wherefore, that here " we may briefly end : of law there can be no less " acknowledged than that her seat is the bosom of " God, her voice the harmony of the world ; all things " in heaven and earth do her homage, the very least as " feeling her care, and the greatest as not exempted " from her power, both Angels and men and creatures " of what condition soever, though each in different sort " and manner, yet all, with uniform consent, admiring " her as the mother of their peace and joy."

# A WRIT OF ELEGIT.

We had our judgment, but what were we going to do with it? The few sticks of furniture that garnished the defendant's domicile were covered by a bill of sale, duly registered and hopelessly unassailable. There was something mysterious about the whole affair. From our letter of application down to the present moment the debtor had made no sign. Our process-server had never seen him; none of the neighbours knew any thing about him. Upon the statements of his wife and daughter, palpable, contradictory lies, we had procured substituted service, and no reasonable man could have read the affidavits upon which the order for such service was granted without coming to the conclusion that here was a plain case of wilful evasion of the writ within the meaning of the act. We took the unusual course of notifying the defendant by letter that judgment had passed against him, and would have been glad to come to almost any kind of arrangement, but still he kept silence.

Things rested thus for some weeks, when one day the plaintiff came to us with the welcome news that there was a row of cottages in a neighbouring village, the rents of which were weekly collected by the debtor's

wife. An examination of the assessment-roll confirmed our client's statement. The houses stood in the defendant's name, and he paid the taxes. A writ of *elegit* was quickly taken out and sent down to the sheriff at the county town. For reply, came a polite intimation that a considerable deposit (£20, if we remember right) was required by that functionary before taking any steps. This sent us to our books, and we found that we were embarking on a voyage of discovery amongst shoals of technicalities heretofore unexplored by any local practitioner. None of our friends could give us any assistance, for none of them had ever had occasion to pursue a writ of *elegit* through its regular and lengthy career. However, our client was determined to see the thing through, and we made the deposit.

It was now for the sheriff to appoint a day, and summon a jury to decide the issue whether or not the lands and hereditaments described in our writ were in the true and lawful seisin of the defendant. The day being fixed, we subpœnaed the rate collector of the parish to attend with his books, and, as an extra safeguard, we took along the clerk to the assessors. These two worthies, average specimens of the rustic parochial official, were in a state of great trepidation at what they considered our most high-handed and unprecedented proceedings, but by dint of vigourous threats, combined with a liberal allowance of conduct money, we got them into line, and on the appointed day we all set off together for S., to go through a performance which, as the head of our firm declared, was as novel to us as if it had been an action in Japan.

Arrived at the county town we found the acting sheriff absent, and his place supplied *pro tem*, by the most old fashioned attorney we ever had the good fortune to encounter. To look at him was to go back to the days when George the Third was king—tall, gaunt and ancient, his neck was enveloped in voluminous folds of not immaculate neck cloth. A veritable frill, worth three times its market value for the South Kensington Museum, protruded from his breast, and shone in strong relief against the dress-coat of rusty black, which completed his outward attire. His manner was a strange blending of dignified courtesy and nervous timidity. A poor, proud foolish old man was he, but undeniably a gentleman. Whilst we were busy arranging our papers the jurors began to arrive by ones and twos. Most of them seemed rather bewildered. It was neither assize nor quarter sessions—what then were they wanted for? Where were the judge, the prisoner, the barristers, the audience? Each looked at his friend, and saw his doubts reproduced in his fellow's face.

As soon as the necessary twelve were present, our ancient friend ascended the bench, and with an air that would have done credit to my lord chief justice, directed his clerk to swear the jury. This done, we opened our case, briefly explaining the purpose of our assembly, and proceeded to call our witnesses. Very strict and formal was the temporary judge, but every thing was complete, and in a quarter of an hour we were ready for the verdict. Not so our worthy patriarch. It was not every day that he sat in the seat of the judges of the land, and accordingly he favored us with a most elaborate oration disguised as a summing up, going into the whole history

of the writ of *elegit*, and quoting statutes by the yard. The jury were evidently getting befogged, and when at last D. ceased, we should not have been surprised had they returned a verdict of accidental death, or any other irrelevant absurdity, such as usually close mock trials at sea. The clerk however kept them straight, putting the verdict, word for word, into the foreman's mouth, and so, after paying a few more fees, and cracking a bottle with the *quondam* judge, we got the sheriff's return, and started home.

Our client was now the legal owner of the property. Had it become necessary to transmute that legal ownership into actual possession, we should have been compelled to go to chancery, and the papers actually went up to counsel to draw the petition, but in the meantime the defendant appeared on the scene, and the mystery was solved. The notices sent by us to the tenants to pay their rents into our hands broke the spell, and it appeared that this was the first intimation the poor fellow had ever received of the action. Old, bedridden and illiterate, he had, months before the account was given us for collection, sent his wife and daughter with the cash to pay our client. It was the only debt left outstanding from his former business, and he lived happy in the thought that he owed no man. But his wife and daughter shamefully deceived him. They kept the money for their own purposes, and when our legal missiles began to rain upon them they artfully contrived to keep the old man in ignorance of every thing. It never crossed their stupid minds that the real property could be attached. The original debt was £120; our costs amounted to nearly as much more, and in the end our

client paid our bill, and took a mortgage on the property (which was of ample value) to cover the whole amount. Thus ended the struggle between the women and the law; our first and last experience with a writ of *elegit*.

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## THE OLD LONDON BANKRUPTCY COURT.

In a narrow, tortuous street, in the heart of the city of London, a stone's throw from Guildhall, stands, or rather stood at the time whereof we write—some twelve years ago—a large and massively built stone edifice whose lofty, well proportioned chambers and commodious staircases seemed to brood in silent dinginess over the ghost of a prosperous and jovial past. Once these chambers had been clothed with rich hangings and deep-piled carpets; these staircases had been trodden by merchant princes; the whole place had been redolent of solid wealth and substantial commerce, and the very name of Basinghall had the same golden flavour which still belongs to Lombard street or Capel Court. Now all was changed. The resort of merchants had become the habitation of the London Bankruptcy Court. Com-

merce had abandoned the spot to the mercy of the lawyers, and dusty and interminable records filled the vaults once sacred to bullion and merchandise.

Yet it was still a busy place. All day long, counsel and attorneys, clerks and insolvents hurried through the corridors, filing petitions and accounts, moving for injunctions and orders, searching records, paying fees. Little by little, by motions, by affidavits, by searches, by attendances, the lawyers' bills mounted up, and even the final taxation added something to the pile. Here was the paradise of red tape, the native home of six-and-eight pences. Litigation and conveyancing hid their heads in shame before the colossal profits of a bankruptcy practice. Not only were the gains large, but they were quick and sure, for the certificate of taxation instantly opened as by magic the trustee's pocket.

The presiding genii of the place were the registrars, six in number, whose duties were divided between Basinghall street and the liquidation office in Portugal street, near Lincoln's Inn. Mild inoffensiveness was the common characteristic of them all. Hazlitt, Brougham, Pepys, were respectable names, and seemed to cast a certain literary halo round their possessors, but a couple of hardheaded, suspicious, old attorneys would have been far better fitted to get through the work, and to choke off the rogues and blacklegs who infested every nook and corner of the building, than these quiet, elderly gentlemen who were evidently and consciously out of their proper sphere. So little influence did the registrars exert, and so little individuality was there about them that at the present moment we have not a recollection

of their personal appearance even,, except as to Hazlitt, whose ruddy face and military white moustache always suggested the idea of an old East Indian officer, presiding over a court-martial. Yet it is not too much to say that had the registrars, aided by the chief judge in bankruptcy, been equal to the not very difficult task of working out an admirably drawn Act of Parliament (for the Bankruptcy Act of 1869 was, in our opinion, a model of skillful draughtmanship) a really efficient insolvency system might have been established that would have given general satisfaction. The fault of the system lay in the costs, which were far too liberal, and yet it was in this very matter of costs that the least supervision was exercised.

Next to the registrars, in his own estimation, came the officer for administering oaths. His only function was to sit in an easy-chair all day and swear affidavits. By a careful cultivation of natural ferocity he had reduced his work to its smallest possible compass, and woe betide the wight who came to him with an affidavit interlined or erased. His signature, he held, was all he was bound to give, and why should he be expected to waste his valuable time initialling alterations ? Once however we saw him moved, and will record the occasion, to his credit. A timid, country lad approached the dread chair in all the security of ignorance, and handed in an affidavit more like a newspaper map than a legal document. Something in the paper caught the old man's eye and he paused to read the contents. The affidavit was an identification by a son of the body of his father, a bankrupt and a suicide. Old S. blew his nose very hard, and initialled the affidavit in silence, and bidding the

lad wait, went behind a screen, from which he emerged in a few moments with something in an envelope. This he handed to the boy, telling him not to open it till he got home, and then, turning to ourselves, who were next in turn, vented his superfluous feeling in some very uncomplimentary remarks about our papers, in which he professed to detect something wrong. For the only time in our experience we did *not* feel like kicking him.

There were many other officials and departments scattered throughout the building, in varying degrees of inefficiency. Perhaps the official auditor should be exempted from the general condemnation, for, as far as he could, he checked the trustees' accounts, and sometimes managed to make life a burden to them. The worst den was the record office, a horrible little room in the cellarage, reeking with gas and mustiness, and it was here that some of the grossest frauds were committed. Occasionally whole files (as the records were usually called) were stolen ; more frequently a single important sheet, a resolution of creditors, or an order of the court, was surreptitiously removed. The technicalities of bankruptcy procedure, and the illegitimate profits so easily made by an unscrupulous man attracted to the court some of the very worst class of practitioners, men quite capable of picking pockets. Our first introduction to bankruptcy practice made us acquainted with one of these fellows, a man who had sacrificed a flourishing practice to drink, and ultimately, a few years afterward, ended in the penitentiary. Our principal had to unravel the thread of a very old and complicated insolvency, and bring it to an issue. This man held all the clues in his hands, and it was our business for several days to accom-

pany him to the different offices simply to pay the necessary fees on the papers, for he could not be trusted with a shilling. When the business was finished he received a liberal fee, and in less than a fortnight he was in the Holloway jail, a judgment debtor.

FINIS.

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